

Initial Statement of Reasons  
Title 13, Division 1, Chapter 1  
Article 4.2 – Vehicle Dealers

A vehicle dealer is currently required to retain business records related to vehicle transactions for a period of not less than three years. Currently, a vehicle dealer is required to maintain all original business records at its principal place of business for 90 days after the purchase, sale, rental, or lease of a vehicle. After the initial 90-day retention period, a dealer is authorized to maintain the records at an off-site storage location for the remainder of the three years provided the records can be retrieved and made available for inspection by the department. A dealer may also choose to create an electronic copy of an original business record provided the electronic copy meets specified requirements to ensure readability and accessibility. The electronic copy is also required to be retained for the remainder of the three-year retention period.

The department proposes to amend Section 272.02 to allow vehicle dealers to create an original electronic business record at any time and continue to use the electronic record to meet the three year record retention requirements of Section 272.00. The department anticipates this amendment will benefit all vehicle dealers who want to create original electronic records, as well as those who will continue to create and retain paper documents. This rule will allow vehicle dealers to potentially save time during each transaction and will allow some to save space by not having to retain paper documents.

CONSIDERATION OF ALTERNATIVES

The department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons that the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

§ 272.02. Location of Business Records.

The purpose of Section 272.02 is to establish the location and retention period requirements that vehicle dealers must follow when holding original business records.

Former subsection (b) is renumbered to subsection (d).

Subsection (c) is renumbered to subsection (a)(1).

Subsection (a)(2) is adopted to allow a dealer to create an electronic copy of an original paper record at any time and to allow an electronic copy of an original business record to satisfy the

record retention requirements after the initial 90-day record retention requirements have been met. This provision is moved from former subsection (d)(1). When referencing ‘original’ business documents or ‘original’ paper documents, it has been generally understood between the department and its licensed vehicle dealers that an ‘original’ document is that which contains the ‘wet’ signature of the parties involved in the purchase, sale, rental, or lease of a vehicle. The department is amending Section 272.02 to allow vehicle dealers to create electronic records in lieu of creating paper records making reference to an original document unnecessary. The amendment is necessary provide clarity for dealers who create electronic documents, as well as those who will continue to use paper documents.

Subsection (a)(3)(A) is renumbered from former subsection (d)(2).

Subsection (d)(1) is renumbered to (b) and is amended remove language that allows for an electronic copy of an original business record to satisfy the record retention requirements of this section and Section 272.00. The language repealed from former subsection (d)(1) is adopted in new subsection (a)(2). Subsection (b) will allow for documents to be created in an electronic format provided the electronic records are created in a manner that complies with Subsections (b)(1) through (b)(5), to ensure readability and accessibility.

Subsections (d)(1)(A) through (d)(1)(E) are renumbered to (b)(1) through (b)(5), respectively. Subsection (b)(4) is amended for lack of necessity to remove reference to an ‘on site or off site location’ when referencing the storage of records. Subsection (b)(5) is amended for lack of necessity to remove language related to back up copies of electronic business records. The department has determined that when sufficient access controls and physical security measures are taken when storing electronic records, it’s unlikely backup records will be necessary.

Former subsection (e) is renumbered to (c) and the requirements are unchanged.

Former subsection (b) is renumbered to (d) and the requirements are unchanged.

#### DEPARTMENTAL DETERMINATIONS SUPPORTING GOVERNMENT CODE SECTIONS 11346.2(b)(3) THROUGH (b)(5)

Studies, Reports or Documents – Gov. Code Sec. 11346.2(b)(3)

- No studies, reports or other documents were relied upon.

Reasonable Alternatives and Department’s Response – Gov. Code Sec. 11346.2(b)(4)(A)

- No alternatives have yet been presented that would be as effective.

Reasonable Alternatives that Would Lessen Any Adverse Impact on Small Businesses – Gov. Code Sec. 11346.2(b)(4)(B)

- No alternatives have yet been presented that would lessen any adverse impact on small business.

Evidence Supporting Determination of No Significant Adverse Economic Impact on Business – Gov. Code Sec. 11346.2(b)(5)

- This regulation will have a positive impact on vehicle dealers who want to create business documents in an electronic format. The department does not anticipate this action will have a significant adverse economic impact on businesses.

ECONOMIC AND FISCAL IMPACT DETERMINATIONS

Cost or Savings to Any State Agency

- None.

Other Non-Discretionary Cost or Savings to Local Agencies

- None.

Costs or Savings in Federal Funding to the State

- None.

Cost Impact on Representative Private Persons or Businesses

- The department is not aware of any cost impacts that a representative private person would necessarily incur in reasonable compliance with the proposed action. This action does not impact private persons. The department anticipates some vehicle dealers could see a positive cost impact potentially by relieving them of the economic burden of storing paper records.

Effect on Housing Costs

- None.

Local Agency/School District Mandates

- The proposed regulatory action will not impose a mandate on local agencies or school districts, or a mandate that requires reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

Small Business Impact

- This proposed action may impact small businesses. While there are many vehicle dealers that are a small business, this action does not require dealers to create original business documents. This proposed action allows another means by which a dealer can create business documents.

Potential significant statewide adverse economic impact.

- The department is unaware of any significant statewide adverse economic impacts associated with this proposed action.

## ECONOMIC IMPACT ASSESSMENT (Government Code section 11346.3)

The department has made the following determinations related to this proposed regulatory action:

- Creation or Elimination of Jobs Within the State of California

This proposed action will neither create nor eliminate jobs within California, as the only change proposed is to allow for business records to be created in an electronic format.

- Creation or Elimination of Existing Businesses Within the State of California

This action could eliminate the requirement that a vehicle dealer retain paper copies of business records. While the department has determined this amendment will have a positive impact on vehicle dealers, it is unlikely the revised rule will result in either the creation or elimination of existing businesses within California.

- Expansion of Business Currently Doing Business Within the State of California

While the department has determined this amendment will have a positive impact on vehicle dealers, it is unlikely the revised rule will result in the expansion of businesses doing business in California.

- Benefits of Regulation to the Health and Welfare of California Residents, Worker Safety and the State's Environment:

This action is unlikely to benefit worker safety or the state's environment, or the welfare of California residents. This action is intended to benefit the vehicle dealer industry by allowing vehicle dealers greater control over their record retention practices by potentially eliminating the requirement that a dealer retain purchase documentation in paper format.