

STATE OF CALIFORNIA



MEMO

To : POLICY AND PROCEDURE COMMITTEE
KATHRYN ELLEN DOI, CHAIR
BISMARCK OBANDO, MEMBER

Date: November 17, 2014

From : WILLIAM BRENNAN
ROBIN PARKER

Subject: CONSIDERATION OF 2015 RULEMAKING CALENDAR

Government Code section 11017.6 requires that every state agency prepare a rulemaking calendar that identifies proposed regulations implementing statutes enacted during the year 2014 and prior to the year 2014. The rulemaking calendar (Attachment 1) is submitted for approval to the Board members, California State Transportation Agency, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law. The text of proposed regulations to be promulgated in 2015 is reflected in Attachment 2.

This matter is being agendaized for consideration at the December 11, 2014, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

Attachments

cc: Glenn Stevens, President

NEW MOTOR VEHICLE BOARD
2015 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2014

Subject: Definitions, Subpoenas and Motions to Quash, Sanctions for Bad Faith Actions, and Adoption and Objection to Proposed Stipulated Decision and Order (new)		CCR Title & Sections Affected: 13 CCR §§ 550, 551.2, 551.21, and 551.22		Statute(s) Being Implemented: Business and Professions Code section 472.5 Code of Civil Procedure sections 128.5, 2015.5, 2016.020, 2023.010, 2023.020, 2023.030, and 2023.040 Government Code sections 11450.30, and 11455.30 Vehicle Code sections 1504, 3050, 3050.1, 3050.2, 3050.7, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076			
Responsible Agency Unit: New Motor Vehicle Board	Contact Person & Phone Number: Robin P. Parker (916) 323-1536	Projected Dates:					
		Notice Published: April 2015	Public Hearing: To be determined	Adoption by your agency: July 2015	To OAL for review: September 2015		
Report on the status of all uncompleted rulemaking described on previous calendars: The proposed regulations for Sections 550, 551.2, 551.12, 551.21, and 551.22 of Title 13 that were published in the New Motor Vehicle Board's 2014 Rulemaking Calendar did not proceed through the rulemaking process; it is anticipated that they will in 2015. The proposed regulations pertaining to the Annual Board Fee (13 CCR §§ 553 and 553.20) published in the Board's 2013 Rulemaking Calendar were not submitted to OAL prior to the expiration of the one-year period due to circumstances beyond the Board's control. The Board does not anticipate a fee increase in 2015.							

NEW MOTOR VEHICLE BOARD
2015 RULEMAKING CALENDAR

SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR TO THE YEAR 2014

Subject: Assignment of Administrative Law Judges and Peremptory Challenges		CCR Title & Sections Affected: 13 CCR § 551.12		Statute(s) Being Implemented: Code of Civil Procedure section 2015.5 Government Code section 11425.40 Vehicle Code section 3050			
Responsible Agency Unit: New Motor Vehicle Board		Contact Person & Phone Number: Robin P. Parker (916) 323-1536		Projected Dates:			
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2015 PROPOSED REGULATIONS¹

§ 550. Definitions.

For the purposes of these regulations:

(a) "Administrative law judge" or "ALJ" means an administrative law judge of the board or Office of Administrative Hearings.

(b) "Affidavit" means a written, ex parte statement made or taken under oath before an officer of the court or a notary public or other person who has been duly authorized to administer oaths.

(c) "Appeal" means an action pursuant to Vehicle Code section 3050(b) filed with the board by an applicant for, or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative against the department after any final decision of the department which adversely affects the application for issuance of the occupational license sought, or adversely affects the occupational license held by the appellant.

(d) "Appellant" means an applicant for, or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, who files an appeal with the board ~~under~~ pursuant to Vehicle Code section 3050(b).

(e) "Board" means the New Motor Vehicle Board.

(f) "Day" means a calendar day, unless otherwise specified.

(g) "Declaration" means a statement that was made under penalty of perjury and that complies with Code of Civil Procedure section 2015.5.

(h) "Department" means the Department of Motor Vehicles of the State of California.

(i) "Director" means the Director of Motor Vehicles.

(j) "Distributor" means any new motor vehicle distributor or distributor branch required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(k) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(l) "Electronically stored information" means information that is stored in an electronic medium.

(m) "Executive Director" means the chief executive officer of the board.

(n) "Hearing" includes the taking of evidence or arguments, before an ALJ ~~of the board~~ or before the board itself, during the adjudicative process on the merits of a petition, appeal or protest, or during the adjudication of a motion or an application for an order.

(o) "Manufacturer" means any new motor vehicle manufacturer as defined in Section 672 or manufacturer branch as defined in Section 389 required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.

(p) "Motion" or "motions" includes all requests and applications filed with the board

¹ If the Board approves the proposed regulation considered at the December 11, 2014, General Meeting, the text of those regulations in addition to the text adopted at the February 4, 2014, General Meeting, are reflected in this document and the 2015 Rulemaking Calendar.

seeking action or ruling by the board.

(q) "Papers" means all documents, except exhibits, offered for filing with the board in any proceeding.

(r) "Party" or "Parties" includes the petitioner, protestant, respondent, department, appellant, director, or intervenor.

(s) "Petition" means a written request filed with the board pursuant to Vehicle Code section 3050(c).

(t) "Petitioner" means any person, including a board member, who files a petition seeking consideration by the board ~~under~~ pursuant to Vehicle Code section 3050(c) of a matter involving a person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative.

(u) "Proposed stipulated decision and order" is a paper submitted by the parties pursuant to Vehicle Code section 3050.7 seeking to resolve one or more issues in a protest or petition pending before the board.

~~(v)~~ "Protest" means an action filed with the board by a franchisee pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076.

~~(w)~~ "Protestant" means any licensed new motor vehicle dealer as defined in Vehicle Code section 426 who files a protest with the board.

~~(x)~~ "Respondent" means any ~~named~~ licensed new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative as defined in Vehicle Code sections 426, 672, 389, 296, 297 and 512, respectively, whose conduct, intended conduct, activities or practices are the subject of a protest or petition.

~~(y)~~ "Serve" or "service" of papers means compliance with one of the methods specified in Article 1, Section 551.24 of these regulations.

(z) "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7.

These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable ~~laws~~ statutes and regulations.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1504 and 3050, 3050.7, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075 and 3076, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5~~(b)~~, Business and Professions Code.

§ 551.2. Subpoenas; Motion to Quash.

(a) Upon the written request of any party that has been properly served on the opposing party or parties, the executive director or an administrative law judge designated by the board or its executive director may, and at the direction of the board the executive director shall, issue a subpoena for the attendance of any person before the board, for the attendance and testimony of a deponent, or a subpoena duces tecum for the production of papers, records, books, and electronically stored information by a witness or a deponent.

(b) The issuance of a subpoena for the attendance and testimony of a witness or for a subpoena duces tecum for the production of papers, records, books, and electronically stored information for hearing shall be governed by the requirements set forth in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil

Procedure, excepting the provisions of subdivision (c) of Section 1985, of that code. A copy of an affidavit shall be served with a subpoena duces tecum for hearing containing the information required by Code of Civil Procedure Section 1985(b).

(c) The issuance of a subpoena for the attendance and testimony of a non-party deponent or for a subpoena duces tecum for the production of papers, records, books, and electronically stored information for deposition of a non-party shall be governed by the requirements set forth in Chapter 1 (commencing with Section 2016.010) of Title 4 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2020.210, subdivisions (a) and (b) of that code. A subpoena duces tecum issued to a non-party deponent need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it.

(d) Following service of the original subpoena upon the witness or deponent, a copy of the subpoena and an original or copy of the executed proof of service shall be filed with the board.

(e) A motion to quash pursuant to Government Code section 11450.30 shall be made in compliance with Article 1, section 551.19. The motion shall be made within a reasonable time after receipt of the subpoena. The person bringing the motion shall serve copies of the motion on all parties. Notice to all other persons entitled to such notice must also be given or received as may be required by law.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050.1(a), Vehicle Code; and Section 11450.30, Government Code.

§ 551.12. Notice of Assignment of Administrative Law Judges; Peremptory Challenges.

(a) The name of the administrative law judge assigned to a protest or petition proceeding will be noted on the order of time and place of hearing. An amended order or notice will be issued if a different administrative law judge is subsequently assigned to the proceeding.

(b) ~~In any proceeding other than those relating to applications for temporary relief or interim orders, each party is entitled to only one peremptory challenge of the assigned administrative law judge~~ Each party is entitled to one peremptory challenge of the ALJ assigned to preside over a hearing on the merits of a petition as required by Vehicle Code section 3050(c) or the ALJ assigned to preside over a hearing on the merits of a protest as required by Vehicle Code section 3050(d), based solely upon satisfying all of the following requirements:

(1) ~~The peremptory challenge shall~~ Any such peremptory challenge must be filed with the board no later than either 20 days from the date of the order of time and place of hearing identifying the merits administrative law judge or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier.

(2) The peremptory challenge may be made by the party, the party's attorney, or authorized representative appearing in ~~any~~ the proceeding, and shall be by written declaration consistent with the requirement of subsection (e), below; and

(3) The peremptory challenge shall be served on opposing parties.

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall

have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board no later than either 20 days from the date of the notice or order identifying the subsequent administrative law judge or 10 days prior to the date scheduled for the hearing, whichever is earlier.

(d) No peremptory challenge shall be considered or granted if it is not made within the time limits set forth above.

(e) Any declaration filed pursuant to this regulation shall be in substantially the following form:

I, _____ (name) _____, declare: That I am a party (or attorney or authorized representative for a party) in the pending matter. That the administrative law judge assigned to the hearing is prejudiced against the party (or his or her attorney or authorized representative of record) or the interest of the party (or his or her attorney or authorized representative) so that the declarant cannot or believes that he or she cannot have a fair and impartial hearing before the administrative law judge.

I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct:

(Date)

(Signature)

(f) Unless required for the convenience of the board or good cause is shown, a continuance of the hearing shall not be granted by reason of a peremptory challenge. ~~If a continuance is granted, the matter shall be continued to the first convenient day for the board and shall be reassigned or transferred for hearing as promptly as possible.~~ Nothing in this regulation shall affect or limit the provisions of Vehicle Code section 3066(a).

(g) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under Article 1, section 551.1.

Note: Authority cited: Sections 3050(a) and 3066, Vehicle Code. Reference: Section 3050(a), Vehicle Code; Section 2015.5, Code of Civil Procedure; and Section 11425.40, Government Code.

§ 551.21. Sanctions - ~~Bad Faith Actions.~~

(a) In any proceeding before the board or an ALJ, no party or representative of a party shall engage in or participate in any actions or tactics that are frivolous, or that are intended to cause or will result in unnecessary delay.

(b) For purposes of this section, "party" or "representative of a party" includes, but is not limited to, a party's officer, director, managing agent, dealer principal or the equivalent, or their attorney.

~~(a) The ALJ may recommend ordering a party, a party's representative or both, to pay reasonable sanctions, including attorney's fees and costs, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.~~

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the board or an ALJ, including a failure to comply timely with a pre-hearing conference order or discovery order.

(2) "Frivolous" includes, but is not limited to means:

(A) Totally without merit as there is an absence of reasonable support, under the facts or law, for making or opposing the motion(s), or for the failure to comply; or

(B) For the sole purpose of harassing an opposing party or counsel.

(C) Actions or tactics, whether consisting of affirmative conduct or failure to act or respond, that will result or do result in unnecessary delay or costs, or are otherwise not in good faith.

(c) A party asserting a violation of this section may, by way of written motion in compliance with Article 1, section 551.19, or oral motion made on the record during reported proceedings, request that the board or an ALJ recommend that the board impose sanctions upon a party, or party's representative, or both.

(d) An ALJ presiding over the matter who believes there has been a violation of this section may on his or her own initiative recommend that the board impose sanctions upon a party, or party's representative, or both.

~~(b)~~ (e) The board shall not order sanctions, or an ALJ shall not recommend an award of sanctions, without providing the party or party's representative against whom sanctions are sought notice and an opportunity to be heard.

(f) The board or ALJ shall make determinations as to whether the actions or tactics were frivolous based upon the administrative record and any additional testimony or documentary evidence presented.

~~(e)~~ (g) Whether there has been bad faith by a party shall be determined by the ALJ based upon testimony under oath or other evidence. Any proposed order recommending sanctions by the ALJ or board order imposing sanctions shall be on the record, or in writing, setting forth the factual findings on which the recommended or board ordered sanctions are based, as well as setting forth the factual findings as to the reasonableness of the sanctions, including the reasonableness of any amount(s) to be paid.

~~(d)~~ (h) A proposed order recommending an award of sanctions shall be considered by the board members at their next regularly scheduled meeting. A determination not to award sanctions is shall not be considered by the board members and is final upon issuance by the ALJ.

~~(e)~~ (i) The board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

(j) If the motion for sanctions is granted, the board may order or an ALJ may recommend that the party or party's representative or both pay the movant's reasonable expenses and attorney's fees incurred in bringing and pursuing the motion. However, attorney's fees and expenses will not be ordered if:

(A) The movant filed the motion before attempting in good faith to obtain compliance by the opposing party without board action;

(B) The opposing party's noncompliance, nondisclosure, response, or objection was substantially justified; or

(C) Other circumstances make an award unjust.

(k) If the motion for sanctions is denied, the board may order or an ALJ may recommend, after giving an opportunity to be heard, the movant or movant's representative or both to pay the party or party's representative who opposed the motion reasonable expenses and attorney's fees in bringing and pursuing the motion for such expenses and attorney's fees. However, attorney's fees and expenses will not be ordered if the motion for sanctions was substantially justified or other circumstances make an award unjust.

(l) If the motion for sanctions is granted in part and denied in part, the board may order or an ALJ may recommend that an award of reasonable expenses and attorney's fees incurred in connection with bringing or opposing the motion be apportioned.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 128.5, 2023.010, 2023.020, 2023.030, and 2023.040, Code of Civil Procedure; Section 11455.30, Government Code; and Section 3050.2, Vehicle Code.

§ 551.22. Adoption and Objection to Proposed Stipulated Decision and Order.

(a) Upon the filing of a proposed stipulated decision and order with the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director to each member of the board.

(b) The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(c) If any member of the board gives notice of objection within 10 days of receipt of a copy of the proposed stipulated decision and order, the proposed stipulated decision and order shall be considered by the board at its next meeting to determine whether to adopt or reject it.

(d) Upon receipt by the executive director of a notice of objection, the executive director shall notify the parties named in the petition or protest that there has been an objection and that the matter will be considered by the board at its next meeting. The parties shall also be given a minimum of 10 days prior notice of the time, date, and location of the board meeting at which the proposed stipulated decision and order will be considered.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3050.7, Vehicle Code.