

Regulations

**California Code of Regulations
Title 13. Motor Vehicles
Division 1. Department of Motor Vehicles
Chapter 2. New Motor Vehicle Board**

§ 550. Definitions

For the purposes of these rules:

- (a) "Board" means the New Motor Vehicle Board.
- (b) "Department" means the Department of Motor Vehicles of the State of California.
- (c) "Director" means the director of the department.
- (d) "Executive Director" means the chief executive officer of the board.
- (e) Unless otherwise designated, the words "respondent," "appellant" or "party" mean the real party in interest.
- (f) "Party" includes the petitioner, respondent, department, appellant or director.
- (g) "Petitioner" means any person, including a board member seeking consideration by the board under subsection (c) of section 3050 of the Vehicle Code 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.
- (h) "Respondent" means any licensed new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative as defined in sections 426, 672, 389, 296, 297 and 512, respectively, of the Vehicle Code.
- (i) "Manufacturer" means any new motor vehicle manufacturer or manufacturer branch required to be licensed pursuant to Article 1 (commencing with section 11700) of Chapter 4 of Division 5 of the Vehicle Code.
- (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) "Protestant" means any licensed new motor vehicle dealer as defined in section 426 of the Vehicle Code.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050-3058, Vehicle Code; and Section 472(b), Business and Professions Code.

HISTORY

1. New subchapter 2 (sections 550 through 590, not consecutive), filed 1-17-69 as procedural and organizational; effective upon filing (Register 69, No.3).
2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
3. Amendment of subsections (g) and (h) and Note filed 10-16-89; operative 11-15-89 (Register 89, No. 44).
4. Amendment filed 12-21-90; operative 12-21-90 (Register 91, No. 7).
5. Change without regulatory effect amending subsection (h) and Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).
6. Change without regulatory effect amending subsection (d) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
7. Amendment of subsections (i)-(j) and new subsection (k) filed 11-8-2005; operative 12-8-2005 (Register 2005, No. 45).

550.10. Application of Subchapter.

Application of this subchapter is subject to the limitations as set forth in section 3051 of the Vehicle Code.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3051, Vehicle Code.

HISTORY

1. New section filed 12-21-90; operative 12-21-90 (Register 91, No. 7).

§ 550.20. Use of Certified Mail in Lieu of Registered Mail

Any notice or other communication required by Chapter 6 of Division 2 of the Vehicle Code to be mailed by registered mail shall be deemed to be in compliance with the requirements of said Chapter if mailed by certified mail.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 29, 3052, 3057, 3058 and 3066-3068, Vehicle Code.

HISTORY

1. New section filed 5-18-2006; operative 6-17-2006 (Register 2006, No. 20).

§ 551. Authority

The powers and duties of this board are set forth in Chapter 6 (commencing at Section 3000) of Division 2 of the Vehicle Code. Persons having matters to be considered by the board, or appeals to the board from actions or decisions of the Department of Motor Vehicles should refer to said Vehicle Code provisions under which these rules are adopted to govern procedural matters of the board. Reference is also made to the General Provisions of the Vehicle Code (commencing at Section 1), and Division 1 thereof (commencing at Section 100), and to the provisions of Chapter 5, Division 3, Title 2 of the Government Code (commencing with Section 11500 thereof).

HISTORY

1. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

§ 551.1. Challenge

An administrative law judge or board member shall voluntarily disqualify himself or herself and withdraw from any hearing or deliberation in which he or she cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any administrative law judge or board member by filing an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns a board member, the issue shall be determined by the other members of the board. Where the request concerns the administrative law judge, the issue shall be determined by the board if the board itself hears the case with the administrative law judge, otherwise the issue shall be determined by the administrative law judge.

Note: Authority cited: Section 3050, Vehicle Code. Reference: Section 11723, Vehicle Code.

HISTORY

1. New section filed 1-28-76 as an emergency; effective upon filing (Register 76, No. 5).
2. Certificate of Compliance filed 5-28-76 (Register 76, No. 22).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
4. Change without regulatory effect amending section filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 551.2. Subpoenas.

(a) Upon the request of any party, the 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, and books 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, and books 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 subsection (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, and books for deposition of a non-party shall be governed by the requirements set forth in Article 3 (commencing with Section 2016.010) of Chapter 3 of Title 3 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 subpoena upon the witness or deponent, the original subpoena and an executed proof of service shall be filed with the Board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050.1(a), Vehicle Code.

HISTORY

1. Renumbering of former Section 579 to Section 551.2 filed 10-16-89; operative 11-15-89 (Register 89, No. 44). For prior history, see Register 79, No.28.
2. Amendment filed 10-9-98; operative 11-8-98 (Register 98, No. 41).
3. Change without regulatory effect amending subsection (a) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
4. Change without regulatory effect amending subsection (c) filed 8-24-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

551.6. Testimony by Deposition

On verified petitions of any party, the board may order that the testimony of any material witness residing within or without the state be taken by deposition in the manner prescribed by law for depositions in civil actions. Petition shall set forth the nature of the pending

proceedings; the name and address of the witness whose testimony is desired; the showing of the materiality of his or her testimony; a showing that the witness shall be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the state and where the board has ordered the taking of his or her testimony by deposition, the board shall obtain an order of court to that effect by filing a petition therefor in the Superior Court in Sacramento County. The proceedings thereon shall be in accordance with the provisions of Section 11189 of the Government Code.

Note: Authority cited: Section 3050, Vehicle Code. Reference: Section 11723, Vehicle Code.

HISTORY

1. New section filed 1-28-76 as an emergency; effective upon filing (Register 76, No. 5).
2. Certificate of Compliance filed 5-28-76 (Register 76, No. 22).
3. Change without regulatory effect amending section filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22)

§ 551.7. Reporting of Proceedings.

The board may, at its discretion, assign the cost of reporting any proceedings before the board, including, but not limited to, transcript fees, reporter's per diem costs, exhibits, pleadings, and reproduction of board files as follows:

- (a) Allocated entirely to one of the parties; or apportioned among the various parties at the discretion of the board; or
- (b) Assumed by the board, in whole or in part.

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

HISTORY

1. New section filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).
2. Certificate of Compliance transmitted to OAH 7-3-79 and filed 7-10-79 (Register 79, No. 28).
3. Change without regulatory effect amending filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).

§ 551.8. Dismissals of Petitions, Appeals, and Protests.

- (a) The board may, at its discretion, dismiss a petition for good cause shown. Good cause may include, but shall not be limited to, failure by the petitioner to comply with any of the following sections of Article 2: 554, 555, 556.
- (b) The board may, at its discretion, dismiss an appeal from decisions of the department for good cause shown. Good cause may include, but shall not be limited to, failure by the appellant to comply with any of the following sections of Article 3: 566, 567, 568, 569, 570, 571(a), 571(b), 571(d), 572(a), 572(b), 572(c), 573(a), 573(d).
- (c) The board may, at its discretion, dismiss a protest for good cause shown. Good cause may include, but shall not be limited to, failure by the protestant to comply with any of the

following sections of Article 5: 583, 585, 586, 589.

(d) The board may, at its discretion, dismiss a petition, an appeal or a protest, if additional information requested by the board is not supplied within the time specified by the board.

(e) An order of dismissal of a petition, an appeal or a protest shall be a final order pursuant to Vehicle Code sections 3057 or 3067, and no reconsideration or rehearing shall be permitted.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a), 3050(c), 3050(d) and 3066, Vehicle Code; Automotive Management Group Inc. [Santa Cruz Mitsubishi] v. New Motor Vehicle Board; Real Party in Interest, Mitsubishi Motor Sales of America, Inc.(1993) 20 Cal.App.4th 1002; 24 Cal.Rptr.2d 904; Duarte & Witting, Inc. v. New Motor Vehicle Board, Defendant and Respondent; DaimlerChrysler Motors Corp., Real Party in Interest and Respondent (2002), 104 Cal.App.4th 626; 128 Cal.Rptr.2d 501.

HISTORY

1. New section filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).
2. Certificate of Compliance transmitted to OAH 7-3-79 and filed 7-10-79 (Register 79, No. 28).
3. Amendment of subsections (a) and (b) filed 7-10-79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 28).
4. Editorial correction (Register 79, No. 38).
5. Amendment of section heading, section and Note filed 8-21-2003; operative 9-20-2003 (Register 2003, No. 34).

§ 551.10. Costs for Changes in Venue

A party to a proceeding before the board may request a change in venue. The board or an administrative law judge designated by the board or its executive director may assess board costs to the requesting party if the requesting party cancels the proceedings at the new location without good cause or sufficient notice to the board to allow the board to avoid costs incurred in changing the venue.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3015 and 3050(a), Vehicle Code

HISTORY

1. New section filed 8-21-2003; operative 9-20-2003 (Register 2003, No. 34).
For prior history, see Register 92, No. 52.

§ 551.11. Settlement Conference: Separation of Powers

(a) The administrative law judge at the settlement conference shall not preside at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim orders unless otherwise stipulated by the parties. Nothing in this regulation shall affect or limit the provisions of Vehicle Code s 3050.4.

(b) The parties shall file a written settlement conference statement that contains a detailed statement of facts, a statement of issues, and a good faith settlement proposal. The settlement conference statement and the original proof of service shall be received by the Board and

copies served on opposing party or parties no later than five business days before the settlement conference.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3050.4, Vehicle Code.

HISTORY

1. New section filed 8-10-98; operative 9-9-98 (Register 98, No. 33).
2. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
3. Amendment of section heading, redesignation of existing section as subsection (a) and new subsection (b) filed 11-8-2005; operative 12-8-2005 (Register 2005, No. 45).
4. Amendment of section heading and subsection (b) filed 5-18-2006; operative 6-17-2006 (Register 2006, No. 20).

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

(a) The assigned administrative law judge in a protest or petition proceeding will be noted on the order of time and place of hearing. If there is a subsequent assignment, an amended order or notice will be issued identifying the new administrative law judge.

(b) In any proceeding other than those relating to applications for temporary relief or interim orders, each party is entitled to a peremptory challenge of one administrative law judge, based solely upon satisfying all of the following requirements:

(1) The peremptory challenge shall be filed with the Board no later than either 20 days from the date of the order of time and place of hearing or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier.

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

(3) Notice of a 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.

This declaration is made under penalty of perjury under the laws of the state of California and is signed ____ (date) ____ at ____ (city and state) ____.

(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 s 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; and Section 11425.40, Government Code.

HISTORY

1. New section filed 9-23-98; operative 10-23-98 (Register 98, No. 39).
2. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
3. Amendment of first paragraph and subsections (e) and (h) filed 11-8-2005; operative 12-8-2005 (Register 2005, No. 45).
4. Amendment of section heading, section and Note filed 5-18-2006; operative 6-17-2006 (Register 2006, No. 20).

§ 551.13. Intervention; Grant of Motion; Conditions.

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a motion with the executive director of the board (or designee) requesting that the movant be allowed to intervene in a pending proceeding. The motion to intervene may be granted subject to the following:

- (a) The motion shall be submitted in writing, with copies served on all parties named in the pending proceeding.
- (b) The motion shall be filed as early as practicable in advance of the hearing.
- (c) The motion shall state facts demonstrating that the applicant's legal rights, duties, privileges, or immunities will be substantially affected by the proceeding.
- (d) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall determine that the interests of justice and the orderly and prompt conduct of the proceeding will not be impaired by allowing the intervention.
- (e) The board, its executive director, or an administrative law judge designated by the board or its executive director, may impose conditions on the intervenor's participation in the proceeding, either at the time that intervention is granted or at a subsequent time. Such conditions shall be at the sole discretion of the board, its executive director, or an

administrative law judge designated by the board or its executive director, based on the knowledge and judgment at that time, so as to promote the interests of justice. Conditions include, but are not limited to, the following:

- (1) Limiting the intervenor's participation to designated issues;
 - (2) Limiting or excluding the intervenor's participation in discovery and cross-examination; and
 - (3) Limiting or excluding the intervenor's participation in settlement negotiations.
- (f) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall issue an order granting or denying the motion for intervention as early as practicable in advance of the hearing, specifying any conditions, and briefly stating the reasons for the order. The board, its executive director, or an administrative law judge designated by the board or its executive director, may modify the order at any time by giving notice to all parties, stating the reasons for the modification. The determination of the board, its executive director, or an administrative law judge designated by the board or its executive director, in granting or denying the motion for intervention, or the determination modifying the order previously issued, is not subject to administrative or judicial review.

The board, its executive director, or an administrative law judge designated by the board or its executive director, may, in his or her discretion, allow the filing of amicus curiae briefs.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11440.50, Government Code.

HISTORY

1. New section filed 6-3-99; operative 7-3-99 (Register 99, No. 23).
2. Change without regulatory effect amending first paragraph and subsections (d)-(f) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 551.14. Request for Informal Mediation.

- (a) Prior to initiating a petition pursuant to section 3050(c) of the Vehicle Code, either party may request that the board mediate any honest difference of opinion or viewpoint existing between any member of the public and any new motor vehicle dealer, manufacturer branch, distributor, distributor branch, or representative.
- (b) Participation in informal mediation is voluntary, informal, and nonadversarial.
- (c) The request for informal mediation shall set forth the nature of the matter which the board is requested to mediate. The request for informal mediation shall comply substantially with the following requirements:
- (1) Include the name, mailing address and telephone number of the person requesting informal mediation; the name, mailing address and telephone number of his or her attorney or authorized agent if any, and the name and address of the licensee or applicant for license whose activities or practices are in question.
 - (2) Insofar as is known to the person requesting informal mediation, include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.

- (3) Describe the relief or disposition of the matter which the person requesting informal mediation would consider acceptable.
- (d) A copy of the request for informal mediation shall be served on the licensee or applicant for license whose activities or practices are in question and proof of service (in compliance with Sections 1013(a) and 2115.5, Code of Civil Procedure) thereof shall accompany the request for informal mediation filed with the executive director of the board.
- (e) The form of the request for informal mediation shall substantially conform with the provisions of Article 6 hereof.
- (f) Article 1, section 553.40 shall apply to all requests for informal mediation.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. New section filed 2-4-2003; operative 3-6-2003 (Register 2003, No. 6).
2. Change without regulatory effect amending subsection (d) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 551.15. Request for Discovery; Informal Mediation.

For purposes of discovery, the board or its executive director, or an administrative law judge designated by the board or its executive director may, if deemed appropriate and proper under the circumstances, authorize the parties to engage in such discovery procedures as are provided for in civil actions in Article 3 (commencing with Section 2016.010) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of Chapter 13, Sections 2030.010 through 2030.410 of that code.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. New section filed 2-4-2003; operative 3-6-2003 (Register 2003, No. 6).
2. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
3. Change without regulatory effect amending section filed 8-24-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 34).

§ 551.16. Informal Mediation Process.

- (a) Upon receipt of the request for informal mediation, the Board staff will initiate a conference call with the parties to ascertain whether the licensee or applicant for license whose activities or practices are in question is agreeable to participating in informal mediation.
- (b) If the licensee or applicant for license whose activities or practices are in question is not agreeable to participating in informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17.
- (c) If the licensee or applicant for license whose activities or practices are in question is

agreeable to participating in informal mediation, a mutually agreeable date for informal mediation will be calendared.

(1) Upon order of the board, and at least five business days prior to participating in informal mediation, the parties shall file and serve a premediation statement which includes a detailed statement of facts, statement of issues, and a realistic proposal for resolving the dispute.

(2) The board, its executive director, or an administrative law judge designated by the board or its executive director, shall preside over the informal mediation.

(3) Evidence set forth in declarations of expert or percipient witnesses made under penalty or perjury may be considered by the board, its executive director, or an administrative law judge designated by the board or its executive director, in his or her discretion

(4) At any time during informal mediation, either party may request that this matter be converted to a petition proceeding pursuant to Article 1, section 551.17

(5) All communications, negotiations, or settlement discussions by and between participants in the course of informal mediation shall remain confidential.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. New section filed 2-4-2003; operative 3-6-2003 (Register 2003, No. 6).

2. Change without regulatory effect amending subsections (c)(2)-(3) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 551.17. Conversion of Informal Mediation to Petition; Confidentiality.

(a) The board or its executive director, upon the request of either party, or upon its own motion, may convert an informal mediation to a petition under section 3050(c) of the Vehicle Code. The respondent shall be an applicant for or holder of a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative.

(b) Within 10 days of approval to convert the proceeding, the petitioner shall file and serve a petition with the board which substantially complies with Article 2, section 555et seq.

(c) Upon receipt of the petition, a copy shall be transmitted by the executive director of the board to each member of the board for consideration in accordance with Section 557 hereof.

(d) If the filing fee was paid by both parties in the informal mediation proceeding, no additional filing fee is required for conversion to a petition.

(e) In accordance with Section 558 hereof, the respondent shall file with the executive director of the board a written answer to the petition.

(f) Chapter 6 (commencing with Section 3000) of Division 2 of the Vehicle Code, and Chapter 2 (commencing with Section 550) of Division 1 of Title 13 of the California Code of Regulations shall apply.

(g) Notwithstanding any other provision of law, a communication made in informal mediation is protected to the following extent:

(1) Anything said, any admission made, and any document prepared in the course of, or pursuant to, informal mediation is a confidential communication, and a party to the informal mediation has a privilege to refuse to disclose and to prevent another from disclosing the communication, whether in an adjudicative proceeding, civil action, or other proceeding.

This subsection does not limit the admissibility of evidence if all parties to the proceeding consent.

(2) No reference to the informal mediation proceedings, the evidence produced, or any other aspect of the informal mediation may be made in an adjudicative proceeding or civil action, whether as affirmative evidence, by way of impeachment, or for any other purpose.

(3) No informal mediation administrative law judge is competent to testify in a subsequent administrative or civil proceeding as to any statement, conduct, decision, or order occurring at, or in conjunction with, the informal mediation.

(4) Evidence otherwise admissible outside of informal mediation is not inadmissible or protected from disclosure solely by reason of its introduction or use in informal mediation.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code; and Sections 11420.30 and 11470.50, Government Code.

HISTORY

1. New section filed 2-4-2003; operative 3-6-2003 (Register 2003, No. 6).
2. Change without regulatory effect amending subsection (a) filed 2-6-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 6).
3. Change without regulatory effect amending subsections (a), (c), (e) and (g)(3) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 552. Records.

(a) Place of Keeping. The records of the board shall be maintained at its principal office at Sacramento in the custody of the executive director. The executive director may certify to any of the board's official acts and may certify copies of all official documents and orders of the board.

(b) Sale of Copies of Records. The executive director shall sell copies of all or any part of the records of the board at a charge sufficient to pay at least the cost of the copies.

(c) Preparation of Certified Copies Without Charge. The board for good cause shown may direct the executive director to certify copies without charge.

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

HISTORY

1. Amendment of subsections (b) and (c) filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).
2. Certificate of Compliance transmitted to OAH 7-3-79 and filed 7-10-79 (Register 79, No. 28).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 553. Annual Board Fee.

(a) Pursuant to section 11723 of the Vehicle Code, every applicant for a license as a new motor vehicle dealer or dealer branch, and every applicant for renewal of a license as a new

motor vehicle dealer or dealer branch, shall pay to the department for each issuance or renewal of such license, the sum of \$225.00, per year of licensure, in addition to all other fees now required by the Vehicle Code.

For the purposes of this section, a dealer or dealer branch which is enfranchised to sell both new motorcycles and new motor vehicles other than motorcycles shall be subject to a licensing fee for sales of motorcycles and a licensing fee for sales of motor vehicles other than motorcycles.

(b) Pursuant to section 3016 of the Vehicle Code, every new motor vehicle manufacturer and distributor shall pay to the Board an annual fee of \$.338 per new motor vehicle distributed by the manufacturer or distributor which was sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year, provided, however, that the fee to be paid by each manufacturer or distributor shall not be less than \$225.00.

The board may waive fees for a new motor vehicle manufacturer or distributor licensed in California, based on a determination that the manufacturer or distributor either does not sell vehicles in California or does not have an independent dealer or dealer branch in California.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 11723 and 3016, Vehicle Code; and Section 472.5(b), Business and Professions Code.

HISTORY

1. Amendment filed 10-14-76 as an emergency; effective upon filing (Register 76, No. 42). For prior history, see Register 76, No. 1.
2. Certificate of Compliance filed 12-15-76 (Register 76, No. 51).
3. Amendment filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).
4. Certificate of Compliance transmitted to OAL 7-3-79 and filed 7-10-79 (Register 79, No. 28).
5. Amendment filed 2-4-82; effective upon filing pursuant to Government Code section 11346.2(d) (Register 82, No. 6).
6. Amendment filed 11-4-82; designated effective 11-5-82 pursuant to Government Code section 11346.2(d) (Register 82, No. 45).
7. Amendment filed 6-17-85; effective upon filing pursuant to Government Code section 11346.2(d) (Register 85, No. 25).
8. Amendment filed 12-21-90; operative 12-21-90 (Register 91, No. 7).
9. Amendment filed 12-19-91; operative 12-19-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 11).
10. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No.52).
11. Amendment filed 7-22-93 as an emergency; operative 7-22-93 (Register 93, No. 30). A Certificate of Compliance must be transmitted to OAL 11-18-93 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 7-22-93 order transmitted to OAL 8-10-93 and filed 9-14-93 (Register 93, No. 38).
13. Editorial correction of printing error in History 12 (Register 93, No.39).

§ 553.10. Statement of Number of Vehicles Distributed.

(a) All manufacturers and distributors of new vehicles (as defined in section 430 of the Vehicle Code) are required to file a written statement with the Board on or before May 1 of each calendar year. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles (3) The name and business address of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) If the information required by subdivision (a) is not received by the Board within the applicable time period or it is determined by the Board that the information that is received is substantially inaccurate as compared to the registration information derived from the records of the Department of Motor Vehicles, it shall be presumed that the number of new motor vehicles sold, leased, or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the total number of new registrations during the period in question of all vehicles manufactured or distributed by the non-reporting entity as derived from the records of the Department of Motor Vehicles.

Note: Authority cited: Section 3050(a) and 3016, Vehicle Code. Reference: Section 472.5(b) and (c)(2), Business and Professions Code.

HISTORY

1. New section filed 12-21-90; operative 12-21-90 (Register 91, No. 7).
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No.52).

§ 553.20. Determination of Annual Board Fee.

Upon receipt of the information required by section 553.10(a), or as determined by section 553.10(b), the Board shall calculate the Annual Board Fee to be paid by each manufacture, and distributor by multiplying the annual fee per vehicle (as set forth in section 553(b)) by the number of new motor vehicles distributed by the manufacturer or distributor in the preceding calendar year. The Board shall thereafter send a written notice by certified mail, return receipt requested, to each manufacturer and distributor stating the number of new motor vehicles distributed by the manufacturer or distributor and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of receipt of the notice.

Note: Authority cited: Section 3050(a) and 3016, Vehicle Code. Reference: Section 472.5(b), (c)(1) and (c)(2), Business and Professions Code.

HISTORY

1. New section filed 12-21-90; operative 12-21-90 (Register 91, No. 7).
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No.52).

§ 553.40. Filing Fees.

A party filing a request for informal mediation, petition, appeal, or protest pursuant to the provisions of this subchapter shall simultaneously deliver to the board a filing fee of \$200, which is to be in the form of a check or money order payable directly to the board, or a credit card payment. The initial pleading filed in response to such request for informal mediation, petition, appeal, or protest shall also be accompanied by a \$200 filing fee. The board, in the discretion of the executive director, may refuse to accept for filing any pleading subject to this section that is not accompanied by the requisite fee. The executive director may, upon showing of good cause, waive any such fee.

Note: Authority cited: Section 3016, 3050(a) and 3050.5, Vehicle Code; and Section 6163, Government Code. Reference: Sections 3060 and 3062, Vehicle Code.

HISTORY

1. Renumbering former section 553.1 to section 553.40 filed 12-21-90; operative 12-21-90 (Register 91, No. 7). For prior history, see Register 85, No.15.
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No.52).
3. Amendment filed 2-4-2003; operative 3-6-2003 (Register 2003, No. 6).
4. Amendment of section and Note filed 8-21-2003; operative 9-20-2003 (Register 2003, No. 34).
5. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 553.50. Obligation to Comply.

(a) All manufacturers, manufacturer branches, distributors and distributor branches of new motor vehicles (as defined in Business and Professions Code Section 472(a)) are required to file a written statement with the New Motor Vehicle Board on or before May 1 of each calendar year. The statement shall include:

- (1) The number of new motor vehicles distributed by the manufacturer or distributor which were sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year
- (2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles; and
- (3) The business address and name of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) Payment of the fees pursuant to Business and Professions Code Section 472.5 shall be the responsibility of the manufacturer or distributor which authorizes a retail seller, including a dealer, franchisee, or lessor (as those terms are defined in the Vehicle Code), to sell, lease, or otherwise distribute the new motor vehicles.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b) and (f), Business and Professions Code; and Sections 285, 331.1 and 372, Vehicle Code.

HISTORY

1. New section filed 8-26-88; operative 8-26-88 (Register 88, No. 36).
2. Change without regulatory effect amending subsections (a) and (b) and Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).

§ 553.60. Presumption of Liability.

If the information required by Section 553.50 is not received by the Board within the applicable time period or it is determined by the Board that the information that is received is substantially inaccurate as compared to the registration information derived from the records of the Department of Motor Vehicles, it shall be presumed that the number of new motor vehicles sold, leased, or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the total number of new registrations during the period in question of all vehicles manufactured or distributed by the non-reporting entity as derived from the records of the Department of Motor Vehicles.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Section 472.5(c), Business and Professions Code.

HISTORY

1. New section filed 8-26-88; operative 8-26-88 (Register 88, No. 36).
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No.52).

§ 553.70. Payment of Fees.

The New Motor Vehicle Board shall determine the fee to be assessed per vehicle by dividing the dollar amount necessary to fully fund the certification program for the Arbitration Certification Program by the number of new motor vehicles sold, leased, or otherwise distributed in California during the preceding calendar year. For calendar year 2006, the fee shall be \$.497 per vehicle.

Upon receipt of the information required by Section 553.50(a), or as determined by section 553.60, the New Motor Vehicle Board shall send a written notice by certified mail, return receipt requested, to manufacturers and distributors subject to the fee assessment stating the number of new motor vehicles distributed by the manufacturer or distributor and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of receipt of the notice.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b), (c) and (e), Business and Professions Code.

HISTORY

1. New section filed 8-26-88; operative 8-26-88 (Register 88, No. 36).
2. Change without regulatory effect amending first paragraph filed 9-15-89 pursuant to section 100, title 1, California Code of Regulations; operative 10-15-89 (Register 89, No. 40).
3. Change without regulatory effect amending section filed 8-17-90 pursuant to section 100, title 1, California Code of Regulations (Register 90, No. 41).
4. Editorial correction of printing error restoring first paragraph (Register 91, No. 30).
5. Change without regulatory effect amending section filed 9-6-91, pursuant to section 100, title 1, California Code of Regulations (Register 91, No. 52).
6. Change without regulatory effect amending first paragraph and Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).
7. Change without regulatory effect amending section filed 2-25-93 pursuant to section 100, title 1, California Code of Regulations (Register 93, No. 9).
8. Change without regulatory effect amending section filed 10-18-93 pursuant to title 1, section 100, California Code of Regulations (Register 93, No. 43).
9. Change without regulatory effect amending section filed 1-26-95 pursuant to section 100, title 1, California Code of Regulations (Register 95, No. 4).
10. Change without regulatory effect amending first paragraph of section filed 2-8-96 pursuant to section 100, title 1, California Code of Regulations (Register 96, No. 6).
11. Change without regulatory effect amending first paragraph of section filed 2-7-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 6).
12. Change without regulatory effect amending first paragraph of section filed 4-29-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 18).
13. Change without regulatory effect amending first paragraph of section filed 3-18-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 12).
14. Change without regulatory effect amending first paragraph filed 3-6-2000 pursuant to section 100, title 1, California Code of Regulations (Register 2000, No. 10).
15. Change without regulatory effect amending first paragraph filed 1-25-2001 pursuant to section 100, title 1, California Code of Regulations (Register 2001, No. 4).
16. Change without regulatory effect amending first paragraph filed 1-30-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 5).
17. Change without regulatory effect amending first paragraph filed 3-6-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2003, No. 10).
18. Change without regulatory effect amending first paragraph filed 1-26-2004

pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 5).

19. Change without regulatory effect amending first paragraph filed 1-4-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 1).

20. Change without regulatory effect amending first paragraph filed 1-18-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 3).

21. Editorial correction of History 2 (Register 2006, No. 50).

22. Change without regulatory effect amending first paragraph filed 12-13-2006 pursuant to section 100, title 1, California Code of Regulations (Register 2006, No. 50).

23. Change without regulatory effect amending first paragraph filed 12-10-2007 pursuant to section 100, title 1, California Code of Regulations (Register 2007, No. 50).

§ 553.71. Delinquency of Payment.

If the fee is not paid within the time period specified in Section 553.70 such fee is delinquent. If the fee is not paid within thirty (30) days after it becomes delinquent, a penalty of ten (10) percent of the amount delinquent shall be added thereto.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b), (c) and (d), Business and Professions Code.

HISTORY

1. New section filed 8-26-88; operative 8-26-88 (Register 88, No. 36).
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No.52).

§ 553.72. Transmittal of Fees by Mail.

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, 1507 21st Street, Suite 330, Sacramento, California, 95814 prior to the date the fee becomes delinquent.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b) and (d), Business and Professions Code.

HISTORY

1. New section filed 8-26-88; operative 8-26-88 (Register 88, No. 36).
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).

§ 553.75. Noncompliance.

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of this Chapter to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(c).

Note: Authority cited: Section 472.5(f), Business and Professions Code; and Section 3050, Vehicle Code. Reference: Sections 472.5(b) and (f), Business and Professions Code; and Section 3050(c), Vehicle Code.

HISTORY

1. New section filed 8-26-88; operative 8-26-88 (Register 88, No. 36).
2. Change without regulatory effect amending Note filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).

§ 554. Petitioners.

Any person, including a board member, concerned with the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, may file a written petition with the board requesting that the board consider such matter and take an action thereon.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment and new NOTE filed 10-16-89; operative 11-15-89 (Register 89, No. 44).

§ 555. Contents.

The petition shall set forth in clear and concise language the nature of the matter which the petitioner wishes the board to consider. The petition shall comply substantially with the following requirements:

- (a) Include the name, mailing address and telephone number of the petitioner; the name, mailing address and telephone number of his or her attorney or authorized agent if any, and the name and address of the licensee or applicant for license (hereinafter referred to as "respondent") whose activities or practices are in question. All correspondence with petitioner and notices to petitioner shall be addressed to petitioner's said address, if he or she appears in person, or to the address of his or her attorney or agent, if he or she is represented by an attorney or agent. Petitioner shall promptly give the executive director and respondent written notice by mail of all subsequent changes of address or telephone number.
- (b) Insofar as is known to petitioner, include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved in the matter.
- (c) If the actions or practices described in the petition are believed to be in violation of law, a concise recitation of applicable law and citation to the applicable statutes or other authorities.

(d) If the petitioner desires that the board mediate, arbitrate or resolve a difference between the petitioner and respondent, recite that fact and describe the relief or disposition of the matter which petitioner would consider acceptable.

(e) The petitioner may submit, as exhibits to the petition, photographic, documentary or similar physical evidence relevant to the matter referred to in the petition, in which event an appropriate description of the exhibits shall be set forth in the petition sufficient to identify them and to explain their relevancy.

(f) The petitioner shall set forth in the petition an estimate of the number of days required to complete the hearing.

(g) The petitioner shall set forth in the petition a request for a prehearing conference if one is desired.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code

HISTORY

1. New subsections (f) and (g) filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).

2. Certificate of Compliance transmitted to OAH 7-3-79 and filed 7-10-79 (Register 79, No. 28).

3. Amendment of subsection (d) and NOTE filed 10-16-89; operative 11-15-89 (Register 89, No. 44).

4. Change without regulatory effect amending subsection (a) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

5. Change without regulatory effect amending subsection (a) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 555.1. Service of Petition upon Respondent(s).

A copy of the petition shall be served upon the respondent(s) and proof of service (in compliance with Sections 1013(a) and 2015.5, Code of Civil Procedure) thereof shall accompany the petition filed with the executive director of the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code

HISTORY

1. New section filed 10-16-89; operative 11-15-89 (Register 89 No. 44).

2. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 556. Form and Filing of Petition.

The form of the petition shall conform with the provisions of Article 6 hereof. The petition shall be filed with the executive director of the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment and new NOTE filed 10-16-89; operative 11-15-89 (Register 89, No. 44).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 557. Notice to Respondent: First Consideration.

(a) Upon the filing of a petition with the board, a copy of the petition shall be transmitted by the executive director of the board to each member of the board for consideration. Unless, within 10 days of receipt of a copy of the petition, any member of the board notifies the executive director of an objection, the executive director shall set the matter for a hearing before an administrative law judge designated by the board.

(b) If any member of the board gives notice of objection within 10 days of receipt of a copy of a petition, the petition shall be first considered by the board at its next meeting to determine what action shall be taken in regards to the petition. Upon receipt by the executive director of a notice of objection, the executive director shall notify the parties named in the petition 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 petition will be considered.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Repealer and new section filed 10-16-89; operative 11-15-89 (Register 89, No. 44).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 558. Answer-Time of Filing; Form and Content.

(a) The respondent shall file with the executive director of the board a written answer to the petition, in the form prescribed by Article 6 hereof. The answer shall be filed within 30 days of the date of service of the petition on the respondent.

(b) The answer shall be responsive to the allegations of the petition and shall set forth in clear and concise language the factual contentions of the respondent with respect to the matter referred to in the petition.

(c) The respondent may submit, as exhibits to the answer, photographic, documentary or similar physical evidence relevant to the matter in support of the answer with an appropriate description thereof in the answer sufficient to identify them and to explain their relevancy.

(d) The respondent shall set forth in the answer its mailing address and telephone number and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence with respondent and notices to respondent shall thereafter be addressed to said address, if it appears in person, or to the address of its attorney or agent, if it is

represented by an attorney or agent. Respondent shall promptly give the executive director and petitioner written notice by mail of all subsequent changes of address or telephone number.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment of subsection (a) filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment of subsection (a), repealer of subsection (c), relettering of former subsections (d) and (e) to subsections (c) and (d), and new NOTE filed 10-16-89; operative 11-15-89 (Register 89, No. 44).
3. Change without regulatory effect amending subsections (a) and (d) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
4. Change without regulatory effect amending subsection (d) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 560. Extension of Time and Continuances.

(a) In the event a party desires additional time for the performance of any act, or a continuation of any proceeding contemplated by these rules, the party shall either make application in writing to the board for such extension or continuance, stating the reason therefor and the additional time requested, or the date to which the continuance is requested, or shall obtain from the other party a written stipulation for the extension or continuance which shall also set forth the reasons therefor and the time requested. The application or stipulation shall be filed with the executive director at least two days prior to the expiration of the period of time in question or the date fixed for the proceeding sought to be continued. If good cause appears therefor, the executive director shall grant the extension or continuance and shall forthwith give notice thereof to the parties by mail; if the extension or continuance is denied, the executive director shall give notice thereof to the parties by mail.

(b) The party applying for an extension or continuance shall serve a copy of the application upon the opposing party, personally or by mail, and shall file with the application an affidavit or certificate of personal service or of mailing of the copy to the opposing party evidencing such service. If the other party wishes to oppose the application, it shall communicate such opposition to the executive director, either orally or in writing, stating its reasons for opposition. The executive director shall consider the reasons stated in opposition in determining whether the application should be granted or denied.

HISTORY

1. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
2. Change without regulatory effect amending subsection (b) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 561. Additional Evidence and Argument in Support of Petition.

(a) A party wishing to present to the board evidence and/or arguments in addition to that submitted in accordance with Section 555 hereof may, prior to the first consideration of the petition by the board, advise the executive director in writing of its desire to do so by filing with the board not later than ten days before the date set for the first consideration of the petition a request to present such additional evidence and/or arguments.

(b) The request to present additional evidence and/or argument filed pursuant to Section 561(a) hereof shall contain, as applicable:

1) The names and addresses of witnesses together with a brief statement summarizing their expected testimony;

(2) Copies or reproduction of all documentary or physical evidence, in addition to that already furnished pursuant to Section 555(e) hereof;

(3) A summary of the subject or subjects expected to be covered by argument;

(4) A statement of the reason or reasons why it is desirable for the board to grant the request.

(c) The board may grant a request filed pursuant to Section 561(a) hereof if it determines that its first consideration of the petition would be assisted by such evidence and more argument.

(d) Upon the filing of the request pursuant to Section 561(a) hereof, the board shall, prior to proceeding with the first consideration of the matter, decide whether to grant the request. If the request is granted, the board shall:

(1) Set a time and place for the hearing where the oral or documentary or physical evidence may be heard and presented. Hearings set pursuant to this provision shall be conducted in accordance with Sections 589, 590 and 592 hereof;

(2) Set the time and place where the argument shall be heard by the board.

(e) The Board shall in no event proceed with the first consideration of a petition unless it has reviewed the additional evidence and/or argument submitted pursuant to the provisions of Section 561(d) hereof.

Note: Authority cited: Section 3050, Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment filed 7-8-77; effective thirtieth day thereafter (Register 77, No. 28).

2. Change without regulatory effect amending subsection (a) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

3. Change without regulatory effect amending subsection (a) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 562. Action by the Board.

After considering the matter, the board may do any one or any combination of the following:

(a) Prior to taking final action, direct the executive director to request the petitioner or the respondent, or both, to augment the record, or to appear to offer evidence or oral argument, or both, or to file briefs, in which event the executive director shall give written notice by mail to the parties of the action by the board, the time within which such augmented pleadings or such briefs are to be submitted or the time and place of further hearing.

(b) Prior to taking final action, direct the department to conduct an investigation and submit a written report within thirty days with or without notice thereof to the parties.

(c) Undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint existing between the petitioner and respondent.

(d) Direct that the department exercise any and all authority or power that it may have with respect to the issuance, renewal, refusal to renew, suspension or revocation of the license and certificate of the respondent as such license and certificate are required under Chapter 4, Division 5 of the Vehicle Code.

(e) Order the petition dismissed, with or without prejudice to the filing of another petition with respect to the same matter, upon such terms or conditions as it may deem just.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment of subsections (a) and (c) and new NOTE filed 10-16-89; operative 11-15-89 (Register 89, No. 44).

2. Change without regulatory effect amending subsection (a) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 564. Decision.

The decision shall be in writing. Copies of the decision shall be served on the parties personally or sent to them by certified or registered mail. The decision shall be final upon its delivery or mailing and no reconsideration or rehearing shall be permitted.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

HISTORY

1. Amendment filed 12-19-91; operative 12-19-91 pursuant to Government Code section 11346.2(d) (Register 92, No. 11).

§ 565. Request for Extension of Time; Temporary Ownership or Operation of a Dealership by a Manufacturer, Branch, or Distributor.

(a) After a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to own and operate a dealership within the relevant market area of an independent dealer of the same line-make in preparation for sale to a successor independent franchisee, the board may extend the time period beyond one year.

(b) When a manufacturer, branch, or distributor seeks to request an extension of time, it shall first give notice in writing of that intention to the board and to each franchisee operating a dealership of the same line-make within the relevant market area.

(c) The written notice shall contain, on the first page thereof in at least 12- point bold type and circumscribed by a line to segregate it from the rest of the text, the following statement:

"NOTICE TO DEALER: If you oppose this request, you may send a letter to the NEW MOTOR VEHICLE BOARD in Sacramento and have your opposition considered by the board. You must file your opposition with the board within 20 days of your receipt of this notice."

(d) When a request for extension of time has been received, the board shall notify each franchisee of the same line-make within the relevant market area, as provided by the manufacturer pursuant to subsection (g)(1) below, that a timely request has been received, that the franchisee has the opportunity to send a letter to the board opposing the request and have that opposition considered by the board at its next scheduled meeting, and that the status quo will be maintained until the board acts upon the request for extension.

(e) In determining whether good cause has been shown for granting the request for an extension of time, the board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

(1) The written request of the manufacturer, branch, or distributor;

(2) Written responses in opposition to the request received from any franchisee operating a dealership of the same line-make within the relevant market area; and,

(3) Comments of other interested parties.

(f) Upon the filing of a timely request for an extension of time, a copy of the request for extension shall be transmitted by the executive director of the board to each member of the board for consideration.

(g) The written request for an extension of time shall be accompanied by all of the following:

(1) A list of all franchisees operating a dealership of the same line-make within the relevant market area.

(2) A statement of facts detailing the specific need for the extension of time.

(3) The requested expiration date of the extension.

(4) A chronology of the actions both taken and planned by the manufacturer, branch, or distributor to prepare for the sale of the franchise to a successor independent franchisee.

(5) A statement to the effect that the information required in subsections (g)(2)-(4) above has been provided to each franchisee operating a dealership of the same line-make within the relevant market area.

(6) A statement that the requesting party does or does not agree that the dealer members of the board may participate in the consideration of the request.

(h) The executive director shall grant the extension unless, within 30 days from receipt of the request for extension, any member of the board notifies the executive director of an objection or the board receives a written response in opposition to the request from any franchisee operating a dealership of the same line-make in the relevant market area.

(i) If any member of the board gives notice of objection within 30 days of receipt of a copy of the request for extension, or if the board receives a timely written opposition to the request from any franchisee operating a dealership of the same line-make within the relevant market area, this matter shall be considered by the board at its next scheduled meeting.

(j) Upon receipt by the executive director of a notice of objection and/or a written opposition from any franchisee operating a dealership of the same line-make within the relevant market area, the executive director shall notify the manufacturer, branch, or distributor that there has been an objection and/or opposition, that the matter will be considered by the board at its next scheduled meeting, and that the status quo will be maintained until the board acts upon the request for extension. The manufacturer, branch, or distributor, and opposing franchisee(s), if any, operating a dealership of the same line-make within the relevant market area shall be given a minimum of 10 days' prior notice of the time, date, and location of the board meeting at which the request for extension will be considered.

(k) Notwithstanding subsections (h), (i) and (j) above, a member of the board who is a new motor vehicle dealer may not participate in, hear, comment, advise other members upon, or decide any matter involving a request subject to this subsection, unless the requesting party to the proceeding has had full disclosure and agrees to such participation by the dealer board member.

(l) On or before 60 days prior to the expiration of the one year period, the manufacturer, branch, or distributor may request an extension of time for good cause shown which shall be in writing. Requests received with less than 60 days' prior notice will not be considered by the board and shall be deemed denied.

(m) Within 20 days of receiving the notice, any franchisee required to be given notice may file an opposition to the request for an extension of time.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 11713.3, Vehicle Code.

HISTORY

1. New section filed 4-4-2002; operative 5-4-2002 (Register 2002, No. 14).
2. Change without regulatory effect amending subsections (h) and (j)-(l) filed 6-3-2002 pursuant to section 100, title 1, California Code of Regulations (Register 2002, No. 23).
3. Change without regulatory effect amending subsections (f), (h) and (j) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 566. Time of Filing Notice of Appeal.

Notice of appeal shall be filed with the executive director of the board on or before:

- (a) Forty days after delivery or registered mailing to appellant the decision appealed from, if its effective date is thirty days following service upon the appellant; or
- (b) Ten days after the effective date of the decision appealed from, if such date is prior to the expiration of the 30-day period; or
- (c) Ten days after the expiration of any stay of execution of the entire decision granted by the department.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Change without regulatory effect amending first paragraph filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 567. Form.

Notice of appeal shall be in writing and signed by appellant or appellant's attorney. It shall conform with the provisions of Article 6 hereof.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

§ 568. Contents of Notice of Appeal.

Notice of appeal shall set forth in concise language the following:

- (a) That appellant is an applicant for, or a holder of, a license as a new car dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative, as defined in Sections 426, 672, 389, 296, 297 and 512 Vehicle Code, respectively.
- (b) Those portions of Sections 3054 or 3055 Vehicle Code providing basis for appeal.
- (c) That appellant has applied to the Office of Administrative Hearings for the complete administrative record or those portions that appellant desires to file with the board and has advanced costs of preparation thereof; or, in lieu thereof, that the case is being submitted on an agreed statement.
- (d) If the appeal is based in whole or in part on Section 3054(e), Vehicle Code, a statement that appellant desires to produce before the board relevant evidence which in the exercise of reasonable diligence could not have been produced or which was improperly excluded at the hearing.
- (e) That appellant either does or does not desire to appear before the board.

HISTORY

- 1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
- 2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
- 3. Change without regulatory effect amending subsection (b) filed 12-24-92 pursuant to section 100, title 1, California Code of Regulations (Register 92, No. 52).

§ 569. Affidavit in Support of Appeal Based on Section 3054(e), Vehicle Code.

Where the notice of appeal contains the statement required by Section 568(d), the notice of appeal shall be supported by an affidavit of the appellant setting forth the matters in either (a) or (b) of this section, or both, as appropriate:

- (a) A statement that there is evidence which was not available at the administrative hearing through the exercise of reasonable diligence; the substance of the evidence; the relevance of the evidence to a disputed issue; and a full explanation of why the evidence was not produced at the administrative hearing.
- (b) A statement that there is evidence which was rejected at the administrative hearing; the substance of the evidence; the relevance of the evidence to a disputed issue; and a statement of the evidence establishing that the proffered evidence was, in fact, presented at the administrative hearing and was rejected despite a duly made offer of proof.

HISTORY

- 1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
- 2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29). This database is current through 4/11/08, Register 2008, No. 15

§ 570. Service of Notice upon Department.

- (a) A copy of the notice of appeal and all supporting affidavits shall be served upon the

department and proof of service shall accompany the notice filed with the executive director of the board.

HISTORY

1. Renumbering from Section 569 and amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 571. Filing with Board the Administrative Record.

- (a) Upon receipt from the Office of Administrative Hearings, appellant shall forward forthwith to the executive director the original and three copies of the complete administrative record which shall consist of the reporter's transcript and all the pleadings and exhibits received at the administrative hearing. In lieu thereof, appellant may forward those parts of the administrative record which appellant deems necessary to support its appeal. If the case is being submitted on an agreed statement, only the accusation and director's decision need be forwarded.
- (b) If appellant files a partial administrative record, it shall serve, prior to or at the time of filing such partial record, written notice on the department of those portions of the record that appellant will file with the board and proof of service of such notice shall be filed with the executive director.
- (c) The department may file any additional portions of the administrative record that it deems necessary to make an adequate presentation of its case. Such filing shall consist of the original and three copies and shall be no later than ten (10) days after notification by appellant of those portions of the record that appellant is filing unless, for good cause shown, the executive director grants additional time. Prior to or at the time the department files additional portions of the administrative record with the board, notice shall be served by the department on appellant of such additional portions and proof of service of such notice shall be filed with the executive director.
- (d) If the complete administrative record has not been filed, the board may order additional portions of such record to be filed at any time during the pendency of the appeal. The board may order prior payment of the cost of providing the additional administrative record so ordered to be filed.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Renumbering from Section 570 and amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
3. Change without regulatory effect amending subsections (a)-(c) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 572. Agreed Statement.

- (a) An appeal may be presented on a record consisting in whole or in part of an agreed statement. Within thirty days after receiving the administrative record, the appellant shall file with the executive director of the board the original and nine copies of such statement signed

by the parties.

(b) The statement shall show the nature of the controversy, identify the questions of law, and set forth only those facts alleged and proved, or sought to be proved, as are necessary to a determination of the questions on appeal.

(c) Ten copies of any such exhibits admitted at the administrative hearing as the parties may desire shall accompany the statement.

(d) For good cause shown, the executive director may grant a continuance of not more than fifteen days for the filing of an agreed statement. Application for a continuance shall be in writing and shall be filed with the executive director at least ten days prior to the date the agreed statement was to be filed. No continuance otherwise requested shall be granted except in extreme emergencies such as serious accident or death.

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

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).

2. Renumbering from Section 571 and amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

3. Amendment of subsection (d) filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).

4. Certificate of Compliance transmitted to OAH 7-3-79 and filed 7-10-79 (Register 79, No. 28).

5. Change without regulatory effect amending subsections (a) and (d) filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 573. Briefs.

(a) Upon receiving the administrative record or agreed statement of facts from appellant, the executive director shall inform the parties in writing of the date by which their briefs must be filed with the board. The parties shall comply with the briefing schedule as established by the executive director.

(b) For good cause shown, the executive director may grant continuances for the filing of briefs making adequate allowance for the 60-day time limitation prescribed in Vehicle Code Section 3056. Application for a continuance shall be in writing and shall be filed with the executive director at least ten days prior to the date the brief was to be filed. No continuance shall be granted except in extreme emergencies such as serious accident or death.

(c) Any party to the appeal desiring to file a brief must submit the original and nine copies for such filing. A copy shall be served upon the opposing party and proof of service thereof shall accompany the original filed with the executive director.

(d) The board may require the parties to file anytime during the pendency of the appeal briefs on matters determined by the board.

(e) A brief of amicus curiae may be filed on permission of the board and subject to conditions prescribed by the board. To obtain permission, the applicant shall file with the executive director a signed request specifying the points to be argued in the brief and containing a statement that the applicant is familiar with the questions involved in the case and the scope of their presentation and believes there is a necessity for additional arguments

on the points specified.

(f) If the application for filing amicus curiae briefs is granted, the original and nine copies shall be filed with the executive director. A copy shall be served on the appellant and the department and proof of service thereof shall accompany the original filed with the executive director.

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

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Renumbering from Section 572 and amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29). For history of former Section 573, see Register 73, No. 12.
3. Amendment of subsections (a) and (b) filed 3-6-79 as an emergency; effective upon filing (Register 79, No. 10).
4. Certificate of Compliance transmitted to OAH 7-3-79 and filed 7-10-79 (Register 79, No. 28).
5. Amendment of subsection (a) filed 7-10-79 as an emergency; effective upon filing. Certificate of Compliance included (Register 79, No. 28).
6. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 574. Notice of Hearing.

At least 20 days prior to the hearing date, the executive director shall serve notice of date, time and place of hearing upon the department, the appellant, the members of the board and any other party making a written request for such notice.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 575. Continuances.

For good cause shown, the executive director may continue the date fixed for the hearing. Applications for continuance shall be in writing and shall be filed with the executive director at least ten days prior to the hearing. No continuance otherwise requested shall be granted except in extreme emergencies such as serious accident or death.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 576. Conduct of Hearing.

Unless otherwise ordered by the board, counsel for each party shall be allowed 20 minutes for oral argument. Not more than one counsel for a party may be heard except that different counsel for appellant may make opening and closing arguments.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).

§ 577. Costs of Appeal.

Each party shall bear its own costs on appeal; costs for preparation of the administrative record and copies thereof shall be borne by the party ordering the same, or if ordered by the board pursuant to Section 571, shall be borne by appellant or the board as determined by the board.

All proceedings before the board predicated on or pursuant to Section 568(d), except deliberations in executive session, shall be reported and transcribed by a certified shorthand reporter arranged for by the executive director. Costs for reporting and for preparation of the original transcript shall be borne by the appellant.

HISTORY

1. New section filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 580. Procedure at Hearings.

(a) Evidence. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Evidence that is irrelevant or unduly repetitious shall be excluded.

(b) Official Notice. Before or after submission of a matter for decision, official notice may be taken by the board of any generally accepted technical or scientific matter within the board's special area of competence or of such facts as may be judicially noticed by the courts of this state.

(c) Examination of Witnesses. Oral evidence shall be taken only on oath or affirmation. Each party shall have the right to call and examine witnesses; to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; to rebut the evidence against him; and to call and examine an adverse party or adverse witness as if under cross-examination without being bound by his or her testimony. Board members and, at the direction of the chairman of the board presiding at the hearing or of any member of the board, representatives of the staff of the board, may participate as appropriate, using their knowledge and experience for the primary purpose of

developing a full, fair and accurate record. Questioning of witnesses will be controlled by the board and will generally be permitted only by the attorneys or agents of parties so represented, or by the parties who appear on their own behalf, members of the board and its staff. The board may in its discretion, during the examination of a witness, exclude from the hearing, any or all other witnesses in the same matter.

HISTORY

1. Amendment filed 3-20-73; effective thirtieth day thereafter (Register 73, No. 12).
2. Change without regulatory effect amending subsection (c) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 581. Deliberations of the Board.

When matters are finally submitted to the board for decision, the board shall take the same under submission and shall conduct its deliberations in executive session. The deliberations of the board shall be in private and shall not be reported.

HISTORY

1. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

§ 582. Failure to Appear.

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the board within five days thereafter. The lack of such showing of good cause may, in the discretion of the board, be interpreted as an abandonment of interest by such party in the subject matter of the proceeding.

HISTORY

1. Amendment filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

§ 583. Form.

A protest shall be in writing and shall be signed by a franchisee or its attorney. It shall conform with the provisions of Article 6 hereof.

Note: Authority cited: Section 3050, Vehicle Code. Reference: Sections 3050 (b), (c) and (d), Vehicle Code.

HISTORY

1. New Article 5 (Sections 583-592) filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment filed 4-12-77 as an emergency; effective upon filing (Register 77, No. 16).
3. Reinstatement of section as it existed prior to emergency amendment filed 4-12-77 by operation of Section 11422.1(b), Government Code (Register 78, No. 32).
4. Change without regulatory effect amending section filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 584. Service of Protest upon Franchisor.

A copy of the protest shall be served upon the franchisor and proof of service (in compliance with Sections 1013(a) and 2015.5, Code of Civil Procedure) thereof shall accompany the protest filed with the executive director of the board.

HISTORY

1. Amendment filed 4-12-77 as an emergency; effective upon filing (Register 77, No. 16). For prior history, see Register 76, No. 22.
2. Reinstatement of section as it existed prior to emergency amendment filed 4-12-77 by operation of Section 11422.1(b), Government Code (Register 78, No. 32).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 585. Time of Filing and Content of Protests Pursuant to Sections 3060, 3062, 3070, and 3072, Vehicle Code.

- (a) The protest shall be considered received on the date of receipt by the executive director of the board or on the date of certified or registered mailing.
- (b) The protest shall be responsive to the specific grounds as set forth in the notice and shall set forth in clear and concise language the factual contentions of the franchisee with respect to the matter referred to in the notice.
- (c) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.
- (d) The franchisee shall set forth in the protest its mailing address and telephone number and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence with franchisee and notices to franchisee shall thereafter be addressed to said address, if it represents itself, or to the address of its attorney or agent, if it is represented by an attorney or agent.
- (e) Franchisee shall indicate either that it does or does not desire to appear before the board.
- (f) The franchisee shall set forth in the protest an estimate of the number of days required to complete the hearing.
- (g) The franchisee shall set forth in the protest a request for a prehearing conference if one is desired.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3060, 3062, 3070 and 3072, Vehicle Code.

HISTORY

1. Amendment filed 1-28-76 as an emergency; effective upon filing (Register 76, No. 5).
2. Certificate of Compliance filed 5-28-76 (Register 76, No. 22).
3. Amendment filed 4-12-77 as an emergency; effective upon filing (Register 77, No. 16).
4. Reinstatement of section as it existed prior to emergency amendment filed 4-12-77 by operation of section 11422.1(b), Government Code (Register 78, No. 32).
5. New subsections (i) and (j) filed 3-6-79 as an emergency effective upon filing (Register 79, No. 10).

6. Certificate of Compliance transmitted to OAL 7-3-79 and filed 7-10-79 (Register 79, No. 28).
7. Amendment filed 4-9-85; effective thirtieth day thereafter (Register 85, No. 15).
8. Amendment of subsection (a) filed 10-21-94; operative 10-21-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 42).
9. Change without regulatory effect amending section heading, subsection (a) and Note filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
10. Change without regulatory effect amending subsections (d)-(e) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 585.1. Time of Filing and Content of Notice of Appearance.

The respondent shall file a notice of appearance with the board within 15 days of receipt of the protest. Failure to file a timely notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed. The notice shall contain language indicating whether the party desires to appear at the hearing for purposes of submitting evidence and oral argument and whether the respondent contends the protest was submitted in a timely manner.

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

HISTORY

1. New section filed 8-6-98; operative 9-5-98 (Register 98, No. 32).

§ 586. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules or Formulas, and Franchisor Incentive Program Reimbursement Pursuant to Sections 3064, 3065, 3065.1, 3074, 3075, and 3076 V.C.

(a) Protests filed with the board under any of these sections of the Vehicle Code shall be filed as follows:

- 1) The protest shall set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.
 - (2) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.
 - 3) The franchisee shall set forth in the protest its mailing address and telephone number and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence with franchisee and notices to franchisee shall thereafter be addressed to said address, if it represents itself, or to the address of its attorney or agency, if it is represented by an attorney or agent.
 - (4) Franchisee shall indicate either that it does or does not desire to appear before the board.
- (b) Schedule of compensation for preparation and delivery obligation and warranty reimbursement schedule or formula shall be filed by the franchiser with the board no later

than 30 days after date license is issued or within 30 days after date of renewal of license if no schedule or formula has previously been filed with the board.

(c) The franchiser shall file with the board any addition, deletion, change or modification to the schedule of compensation or reimbursement schedule or formula on file with the board on or before the date such addition, deletion, change or modification becomes effective.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a) and (d), 3064, 3065, 3065.1, 3074, 3075, and 3076, Vehicle Code.

HISTORY

1. Amendment of section heading and subsection (a) and new Note filed 9-29-99; operative 10-29-99 (Register 99, No. 40).
2. Change without regulatory effect amending section heading and Note filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
3. Change without regulatory effect amending subsections (a)(3)-(4) filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 587. Stipulation of Fact.

(a) A hearing initiated by the filing of a protest with the board pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076 may be held based in whole or in part on a stipulation of fact. Within 45 days after filing a protest, the franchisee shall file with the executive director of the board the original and 10 copies of such statement signed by the parties.

(b) The statement shall show the nature of the controversy, identify the questions of law, if any, and set forth only those facts alleged or sought to be proved, as are necessary to a determination of the issues raised by the protest.

(c) For good cause shown, the executive director may grant a continuance for the filing of a stipulation of fact of not more than fifteen days.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a) and (d), 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075 and 3076, Vehicle Code.

HISTORY

1. Amendment of subsection (a) and new Note filed 9-29-99; operative 10-29-99 (Register 99, No. 40).
2. Change without regulatory effect amending subsections (a) and (c) and Note filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 588. Deliberations of the Board.

When matters are finally submitted to the board for decision, or the board receives a proposed decision of an administrative law judge, the board shall take the same under

submission and shall conduct its deliberations in executive session. The deliberations of the board shall be in private and shall not be reported.

HISTORY

1. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§589. Failure to Appear.

Any party who fails to appear at a hearing will not be entitled to a further opportunity to be heard unless good cause for such failure is shown to the board or to the administrative law judge within five days thereafter. The lack of such showing of good cause may, in the discretion of the board or the administrative law judge, be interpreted as an abandonment of interest by such party in the subject matter of the proceeding.

HISTORY

1. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 590. Hearings by Board or by Administrative Law Judge.

All hearings on protests filed pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076 may be considered by the entire board or may, at its discretion, be conducted by an administrative law judge designated by the board who shall either be a member of the board, an administrative law judge on the staff of the Office of Administrative Hearings, or any person specifically designated by the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(a) and (d), 3060, 3062, 3064, 3065, 3065.1, 3066, 3070, 3072, 3074, 3075 and 3076, Vehicle Code.

HISTORY

1. Amendment filed 9-23-76 as an emergency; effective upon filing (Register 76, No. 39).
2. Certificate of Compliance filed 12-15-76 (Register 76, No. 51).
3. Amendment of section and new Note filed 9-29-99; operative 10-29-99 (Register 99, No. 40).
4. Change without regulatory effect amending section heading, section and Note filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
5. Amendment filed 3-24-2006; operative 4-23-2006 (Register 2006, No. 12).

§ 591. Notice of Hearing.

The board shall, by an order, fix the time and place of hearing. The hearing shall be within 60 days of the date of such order. A copy of the order giving notice of the time and place of hearing shall be sent by registered mail to the franchiser, the protesting franchisee and to all individuals and groups which have requested such notice.

§ 592. Continuances.

Within the time limitation fixed by Section 3066(a), the board, or the administrative law judge, for good cause shown, may continue the date fixed for the hearing. Application for continuance shall be in writing and filed with the executive director at least 10 days prior to the date of hearing. No continuances otherwise requested shall be granted except in extreme emergencies such as serious accident or death.

HISTORY

1. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 593. Papers Defined -Approved Forms.

The word "papers" means all documents, except exhibits or copies of documents, which are offered for filing to the executive director in any proceeding before the board; provided, however, that it does not include any printed forms approved by the board. Approved forms shall be furnished by the executive director to the public on request, and, unless it is impracticable to do so, the parties to proceedings before the board shall use approved forms.

HISTORY

1. Renumbering from section 585 filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment of article heading filed 10-21-94; operative 10-21-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 42).
3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 593.1. Notices.

All written notices pursuant to Vehicle Code section 3062 or 3072 shall be textually segregated in a separate paragraph such that the language informing the recipient of the intention of the franchisor to establish or relocate a dealership is not intermingled with or obscured by the surrounding text.

Note: Authority cited: Sections 3062 and 3072, Vehicle Code. Reference: Section 3014, Vehicle Code.

HISTORY

1. New section filed 10-21-94; operative 10-21-94 pursuant to Government Code section 11346.2(d) (Register 94, No. 42).
2. Change without regulatory effect amending section and Note filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).

§ 593.2. Briefs.

Any brief filed with the board in support or opposition to any application, motion,

memorandum of points and authorities or other position paper, shall include copies of any court decision cited within that brief which decision is not taken from an official reporter.

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

HISTORY

1. New section filed 8-10-98; operative 9-9-98 (Register 98, No. 33).

§ 593.3. Failure to File or to Timely File Statutorily Required Notices, Schedules, or Formulas.

Failure to file or to timely file the statutorily required notices, schedules, or formulas required by the Vehicle Code may result in the board ordering the department to exercise any and all authority or power that the department may have with respect to the issuance, renewal, refusal to renew, suspension, or revocation of the license of any new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative as that license is required under Chapter 4 (commencing with Section 11700) of Division 5.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3060, 3062, 3064, 3065 and 11713.3, Vehicle Code; and Section 1795.92, Civil Code.

HISTORY

1. New section filed 3-8-2002; operative 4-7-2002 (Register 2002, No. 10).

§ 594. Size of Paper, Pagination, Etc.

All papers shall be typewritten or printed on opaque, unglazed, white paper, not less than twenty pound weight, standard quality letter size (8 1/2 x 11 inches in size). Only one side of the paper shall be used and the margins shall be not less than 1 inch on the left hand side of the page and 1/2 inch on the top, bottom and right hand sides of the page. Headings shall be either capitalized or underscored, or both, and all quotations shall be indented. The type shall be not smaller than 12 points. The lines on each page shall be double spaced. Line numbers shall be placed at the left margin and separated from the text of the paper by a vertical column of space at least one-fifth inch wide or a single or double vertical line. The line number either shall be placed on the same line as a line of type or shall be evenly spaced vertically on the page. Line numbers shall be consecutively numbered beginning with the number 1 on each page. There shall be at least three line numbers for every vertical inch on the page. The pages shall be numbered consecutively at the center of the page at the bottom. All papers shall consist entirely of original pages without riders and shall be firmly bound together at the top. Exhibits may be fastened to pages of the specified sizes and, when prepared by a machine copying process, shall be equal to typewritten material in legibility and permanency of image.

Note: Authority cited: Sections 3050(a), Vehicle Code. Reference: Sections 3050(c) and 3051, Vehicle Code.

HISTORY

1. Renumbering from Section 586 filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment of section and new Note filed 9-5-2000; operative 10-5-2000 (Register 2000, No. 36).

§ 595. Format of First Page.

The first page of all papers shall be in the following form: Commencing in the upper left hand corner and to the left of the center of the page, the name, office address (or if none, the residence address), mailing address (if different from the office or residence address), electronic- mail (e-mail) address, if available, and the telephone number of the attorney or agent for the party in whose behalf the paper is presented, or of the party if he or she is appearing in person. If the party is represented by an attorney, provide the state bar number of the attorney beside the name of the attorney. Below the name, address and telephone number, and centered on the page, the title of the board. Below the title of the board, in the space to the left of the center of the page, the title of the proceeding, e.g., John Doe, petitioner (or protestant, or appellant) vs. Richard Roe (or Department of Motor Vehicles), respondent, as the case may be. To the right of and opposite the title, the number of the proceeding, which shall be assigned consecutively by the executive director in the order of filing in petition and appeal proceedings. Numbers in protest proceedings shall be assigned consecutively by the executive director following receipt of a notice of appearance from the respondent and upon payment of all filing fees as required by section 553.40 of Title 13 of the California Code of Regulations. No number shall be assigned to more than one proceeding. Immediately below the number of the proceeding, the nature of the paper, e.g., "Request for Informal Mediation," "Petition," "Protest," "Answer," "Appeal," "Request for Hearing," "Petitioner's Opening Brief," etc. The first allegation of the petition shall state the name and address of the respondent and whether the respondent is the holder of or an applicant for an occupational license of the type issued by the Department of Motor Vehicles such that the respondent is subject to the jurisdiction of the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(c) and 3051, Vehicle Code.

HISTORY

1. Renumbering from Section 587 filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).
2. Amendment and new NOTE filed 10-16-89; operative 11-15-89 (Register 89, No. 44).
3. Amendment filed 9-15-98; operative 10-15-98 (Register 98, No. 38).
4. Amendment filed 9-19-2000; operative 10-19-2000 (Register 2000, No. 38).
5. Amendment filed 2-4-2003; operative 3-6-2003 (Register 2003, No. 6).
6. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).
7. Change without regulatory effect amending section filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 596. Conformance of Copies.

All copies shall conform to the original filed.

HISTORY

1. Renumbering from Section 588 filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

§ 597. Last Page.

Every paper shall be dated and signed. At the end of each paper, the date shall appear on the left of the center of the page. Petitions, answers and appeals shall be subscribed by the party and by his or her attorney or agent, if he or she is represented. All other papers shall be subscribed by the party's attorney or agent, if he or she is represented, or by the party, if he or she appears in person. The signature shall appear at the end of the paper on the right hand side.

HISTORY

1. Renumbering from Section 589 filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

2. Change without regulatory effect amending section filed 5-31-2005 pursuant to section 100, title 1, California Code of Regulations (Register 2005, No. 22).

§ 598. Acceptance of Filing.

(a) A document which purports to be a protest pursuant to Vehicle Code section 3060, 3062, 3070, or 3072, which is received at the offices of the Board shall not be filed until the executive director has reviewed it for compliance with the Board's enabling statutes and Title 13, Subchapter 2 of the California Code of Regulations. If the executive director deems the document to comply, said document shall be filed. The executive director may reject any document that does not comply with the Board's enabling statutes and Title 13, Subchapter 2 of the California Code of Regulations.

(b) A protest accepted for filing by the executive director shall be recorded as filed as of the date it was received at the Board's offices or the date of certified or registered mailing.

(c) The executive director may, for good cause shown, accept for filing any papers that do not comply with the Board's enabling statutes and Title 13, Subchapter 2 of the California Code of Regulations. Good cause issues and challenges to the executive director's compliance determinations may be resolved by law and motion proceedings before an administrative law judge.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3014, Vehicle Code.

HISTORY

1. Renumbering from section 590 filed 7-19-74; effective thirtieth day thereafter (Register 74, No. 29).

2. Amendment and new Note filed 12-12-94; operative 12-12-94 pursuant to

Government Code section 11346.2(d) (Register 94, No. 50).

3. Change without regulatory effect amending section filed 12-31-2003 pursuant to section 100, title 1, California Code of Regulations (Register 2004, No. 1).