§ 550. Definitions.

For the purposes of these ~~rules~~ regulations:

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

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

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

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

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

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

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

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

~~(c)~~(i) "Director" means the ~~d~~Director of Motor Vehicles ~~the department~~.

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

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

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

~~(d)~~(m) "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.~~

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

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

(p) "Motion" or "motions" includes all requests and applications filed with the board seeking action or ruling by the board.

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

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

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

~~(g)~~(t) "Petitioner" means any person, including a board member, who files a petition

seeking consideration by the board under ~~subsection (c) of Section 3050 of the~~ Vehicle Code section 3050(c) of a matter involving a person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative.

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

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

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

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

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

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1504 and 3050-, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076~~3058~~, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5(b), Business and Professions Code.

§ 551.2. Subpoenas; Motion to Quash.

(a) Upon the written request of any party that has been properly served, 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, and electronically stored information by a witness or a deponent.

(b) The issuance of a subpoena for the attendance and testimony of a witness or for a subpoena duces tecum for the production of papers, records, ~~and~~ books, and electronically stored information for hearing shall be governed by the requirements set forth in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of ~~subsection~~ subdivision (c) of Section 1985, of that code. A copy of an affidavit shall be served with a subpoena duces tecum for hearing containing the information required by Code of Civil Procedure Section 1985(b).

(c) The issuance of a subpoena for the attendance and testimony of a non-party deponent or for a subpoena duces tecum for the production of papers, records, ~~and~~ books, and electronically stored information for deposition of a non-party shall be governed by the requirements set forth in Chapter 1 ~~Article 3~~ (commencing with Section 2016.010) ~~of Chapter 3~~ of Title ~~3~~ 4 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2020.210, subdivisions (a) and (b) of that code. A subpoena duces tecum issued to a non-party deponent need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it.

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

board ~~Board~~.

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

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

§ 551.11. Settlement Conference: Separation of Powers.

(a) Unless otherwise stipulated by the parties, the ~~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 ~~§~~ section 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.~~ Each party shall file a written settlement conference statement that must be received by the board no later than five business days before the settlement conference. The settlement conference statement shall contain a detailed statement of facts, a statement of issues, and a good faith settlement proposal. Unless the parties agree orally or in writing that the statements shall be submitted only to the board for use by the assigned settlement conference administrative law judge and designated “confidential”, the settlement conference statement filed with the board shall be accompanied by a proof of service showing service on all other parties.

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

§ 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.~~ The name of the administrative law judge assigned to a protest or petition proceeding will be noted on the order of time and place of hearing. ~~If there is a subsequent assignment, an amended order or notice will be issued identifying the new administrative law judge.~~ An amended order or notice will be issued if a different administrative law judge is subsequently assigned to the proceeding.

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

(1) The peremptory challenge shall be filed with the board ~~Board~~ no later than either 20 days from the date of the order of time and place of hearing identifying the

administrative law judge or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier.

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

(3) ~~Notice of a~~ The peremptory challenge shall be served on opposing parties.

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board ~~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~~ I certify (or declare) under penalty of perjury under the laws of the ~~s~~State of California that the foregoing is true and correct: ~~and is signed on (date) at (city and state) .~~
>
> _____ _____
>
> (Date) (Signature)

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

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

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

§ 551.19. Motions; Form, Briefing, and Hearings.

(a) Unless made during a hearing while on the record, all motions shall be in writing and filed with the board with an attached proof of service on all parties.

(b) Motions and any response thereto including opposition to motion and reply to opposition shall conform to the requirements of Article 6 herein. The motion and any

response shall state in plain language the relief sought and the facts, circumstances, and legal authority that support the motion or the response.

(c) Briefing may be permitted by stipulation of the parties or by order of the board.

(d) Notwithstanding Government Code section 11440.30 of the Administrative Procedure Act, the ALJ may conduct the hearing by telephone, television, or other electronic means if each party in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits. In the event of live testimony, the hearing shall be conducted in person before the ALJ.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11440.30, Government Code.

§ 551.20. Conduct of Hearing; Protective Orders.

(a) A motion seeking an order for closure or other protective order for all or part of a hearing, including a motion to seal designated portions of the record shall be made before the ALJ presiding at the hearing to which the order will apply. The motion may be made by separate writing or it may be made orally on the record. It may be made at the commencement of or during the course of the hearing but must be made as early as is practicable. In any case, the provisions of Government Code section 11425.20 shall be applicable.

(b) The motion shall clearly identify the relief sought and the facts, circumstances, legal authority, and shall include declarations or other evidence that support the motion.

(c) An oral or written opposition to the motion may be permitted in the discretion of the ALJ.

(d) The ALJ shall set forth on the record the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close all or part of the hearing to the public.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 11425.20, Government Code; Rule 2.550 and 2.551, California Rules of Court.

§ 551.23. Interpreters and Accommodation.

(a) Each party and each party's attorney are responsible for timely communicating to the board any needs of the party, the party's agent or a witness for the following:

(1) Language assistance, including sign language.

(2) Accommodation for a disability.

(3) Electronic amplification for hearing impairment.

(4) Any other special accommodation.

(b) In accordance with Government Code section 11435.25, the board may direct that the cost of providing an interpreter shall be paid by the board or by the party at whose request the interpreter is provided. The board's decision to direct payment shall be based upon an equitable consideration of all the circumstances, such as the ability of the party in need of the interpreter to pay.

(c) An interpreter at a hearing or other proceeding shall be sworn by oath or affirmation to perform his or her duties truthfully. The oath or affirmation shall be in substantially the following form:

"Do you swear or affirm that, to the best of your skill and judgment, you will make a true

interpretation of the questions asked and the answers given and that you will make a true translation of any documents which require translation?"

(d) Any interpreter used at the hearing must have an oath on file with the Superior Court, and be certified and registered in accordance with Article 4 (commencing with Section 68560) of Chapter 2 of Title 8 of the Government Code. However, if an interpreter certified pursuant to Government Code section 11435.30 cannot be present at the hearing, the board shall have discretionary authority to provisionally qualify and use another interpreter.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 751, Evidence Code; and Sections 11435.05, 11435.10, 11435.25, 11435.55, 11435.65, and 68560, et seq., Government Code.

§ 551.24. Service; Proof of Service.

(a) Proof of service of papers shall be made in accordance with Code of Civil Procedure section 1013a.

(b) Where service is by facsimile the proof of service shall state the method of service upon each party, the date and time sent, and the facsimile telephone number to which the document was sent.

(c) Where service is by electronic-mail the proof of service shall state the method of service upon each party, the date and time of electronic service, and the name and electronic notification address of the person served.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 11440.20, Government Code; and Section 1013a, Code of Civil Procedure.

§ 551.25. Substitution or Withdrawal of Counsel.

(a) The party to a protest, petition or appeal may substitute counsel of record at any time. It shall be evidenced by a writing signed by the party and new counsel of record and filed with the board. The writing shall be served on all other parties named in the proceeding.

(b) Counsel of record for a party may not withdraw from a protest, petition, or appeal without permission from the board. To obtain permission, counsel must file and serve a written request to withdraw, stating with particularity the factor or factors as set forth in Rule 3-700 of the Rules of Professional Conduct and Code of Civil Procedure section 284, justifying the request. Declarations of counsel may be filed under seal, but must be served on the party of the moving counsel, who then has an opportunity to be heard.

(c) Substitution or withdrawal of counsel does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

NOTE: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(a), Vehicle Code; Rule 3-700, Rules of Professional Conduct, and Section 284, Code of Civil Procedure.