

PROPOSED REGULATIONS: NON-SUBSTANTIVE

§ 550. Definitions.

For the purposes of these regulations:

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

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

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

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

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

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

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

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

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

~~(h)(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.

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

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

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

~~(l)(n)~~ "Hearing" includes the taking of evidence or arguments, before an ALJ 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.

~~(m)(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.

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

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

~~(p)(r)~~ "Party" or "Parties" includes the petitioner, protestant, respondent, department,

~~appellant, director,~~ or intervenor. For purposes of a peremptory challenge, an intervenor is not a party.

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

~~(r)(t)~~ "Petitioner" means any person, including a board member, who files a petition seeking consideration by the board pursuant to Vehicle Code section 3050~~(e)(b)~~ 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.

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

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

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

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

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

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

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

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

§ 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, Part 1, Division 3, Title 2 of the Government Code (commencing with Section 11500 thereof).

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 1, et seq., and 3000, et seq., Vehicle Code; Section 11500, et seq., Government Code.

§ 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).~~

~~(b)(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.

~~(c)(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.

~~(d)(e)~~ An order of dismissal of a petition, ~~an appeal~~ or a protest shall be a final order pursuant to Vehicle Code sections ~~3057~~, 3067, and 3081 and no reconsideration or rehearing shall be permitted.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050~~(a)~~, ~~3050(c)~~, ~~3050(d)~~, 3066, and 3080, 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.

§ 551.14. Request for Informal Mediation.

(a) Prior to initiating a petition pursuant to section 3050~~(e)~~(b) 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, 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 1013a and 2015.5, 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 herein.

(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(~~e~~), Vehicle Code.

§ 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 Chapter 1 (commencing with Section 2016.010) of Title 4 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(~~e~~), Vehicle Code.

§ 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 of 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(~~e~~), Vehicle Code.

§ 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(~~e~~)(b) 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 555 *et 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 herein.

(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 herein, 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(~~e~~), Vehicle Code; and Sections 11420.30 and 11470.50, Government Code.

§ 551.25. Substitution or Withdrawal of Counsel.

(a) The party to a protest, or 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, or petition ~~or appeal~~ without permission from the board. To obtain permission, counsel must file and serve a written request to withdraw or be relieved as counsel in compliance with Article 1, section 551.19 that satisfies the requirements of Rule 3.1362 of the California Rules of Court (Rev. 1/2017), which is hereby incorporated by reference, and Code of Civil Procedure section 284. 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 3.1362, California Rules of Court; and Section 284, Code of Civil Procedure.

§ 553.30. Noncompliance.

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of Article 1, Section 553.10 or 553.20 to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(~~e~~)(b).

Note: Authority cited: Sections 3016 and 3050(a), Vehicle Code. Reference: Section 3050(~~e~~), Vehicle Code.

§ 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 3050, ~~3052~~, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076, Vehicle Code.

§ 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(~~e~~)(b).

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~~(e)~~, Vehicle Code.

§ 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~~(e)~~, Vehicle Code.

§ 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~~(e)~~, Vehicle Code.

§ 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 1013a 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(~~e~~), Vehicle Code; and Sections 1013a and 2015.5, Code of Civil Procedure.

§ 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(~~e~~), Vehicle Code.

§ 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 herein 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) herein 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) herein;
- (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) herein 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) herein, 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 herein;

(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) herein.

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

§ 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(e), Vehicle Code.

§ 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(e), Vehicle Code.

Article 3. Appeals from Decisions of the Department [repealed]

§ 566. Time of Filing Notice of Appeal. [repealed]

~~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.~~

§ 567. Form of Appeal. [repealed]

~~A notice of appeal shall be in writing and conform to the provisions of Article 6 herein. If the appellant is a natural person, not a corporation or other legal entity, the appeal shall be signed by that person or by the appellant's attorney or representative. If the appellant is a corporation or other legal entity, the appeal shall be signed by an attorney representing the entity, or by an authorized representative of the entity.~~

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

§ 568. Contents of Notice of Appeal. [repealed]

~~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.~~

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

~~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.~~

§ 570. Service of Notice upon Department. [repealed]

~~(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.~~

§ 571. Filing with Board the Administrative Record. [repealed]

~~(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.~~

§ 572. Agreed Statement. [repealed]

~~(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.

§ 573. Briefs. [repealed]

~~(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.

§ 574. Notice of Hearing. [repealed]

~~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.~~

§ 575. Continuances. [repealed]

~~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.~~

§ 576. Conduct of Hearing. [repealed]

~~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.~~

§ 577. Costs of Appeal. [repealed]

~~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.~~

Article 4. Hearings on Petitions and Appeals

§ 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 1013a and 2015.5, Code of Civil Procedure thereof shall accompany the protest filed with the executive director of the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(d), Vehicle Code; and Sections 1013a and 2015.5, Code of Civil Procedure.

§ 591. Notice of Hearing of Protest.

The board shall, by an order, fix the time and place of hearing on the merits of a protest. 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 certified mail to the franchisor and the protesting franchisee, and to all parties, individuals, and groups that have requested such notice.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(~~d~~), 3066, and 3080, Vehicle Code.

§ 592. Continuances.

Within the time limitation fixed by Section 3066(a) or 3080(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.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(~~d~~), 3066, and 3080, Vehicle Code.

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

Failure to file or to timely file the statutorily required notices, or 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, 3070, 3072, 3074, 3075 and 11713.3, Vehicle Code; and Section 1795.92, Civil Code.

§ 595. Format of First Page; Format and Filing of Papers.

(a) The first page of all papers shall be in the following form:

(1) 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 address (if available), and the telephone number and facsimile number (if available) 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, the state bar number of the attorney shall be beside the name of the attorney.

(2) 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~~), respondent, as the case may be.

(3) 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, ~~appeal~~, and protest proceedings. The same number shall not be assigned to more than one petition, ~~appeal~~ or protest.

(4) 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. If the paper is a "Petition", 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 such that the respondent is subject to the jurisdiction of the board.

(5) The dates of the hearing and any future pre-hearing or settlement conferences, if known.

(b) In addition to a paper copy, the board may direct a party to submit pleadings or other papers by electronic means if the party is able to do so.

(c) A party may obtain proof of the filing of a paper by submitting either an extra copy of the paper or a copy of the first page only, with a self-addressed, return envelope, postage prepaid. The copy will be returned to the party with the date of filing indicated.

(d) Papers may be filed with the board by facsimile or electronic-mail transmission. Unless required by the ALJ or by order of the board, the original paper need not be filed with the board if the party obtains telephonic or other confirmation from the board that a complete and legible copy of the papers was received.

(e) Notwithstanding Code of Civil Procedure Section 1013(a), papers delivered to the board by the U.S. Postal Service or other means are deemed filed on the date actually received by the board. Papers hand delivered to the board and complete papers received by facsimile or electronic-mail transmission during regular business hours (8 a.m. to 5 p.m.) will be filed on the date received. Papers received after regular business hours are deemed filed on the next regular business day.

(f) Protests sent by U.S. Postal Service certified or registered mail are deemed received by the board on the date of certified or registered mailing and will be filed as of the date of the certified or registered mailing.

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

§ 597. Last Page; Signature.

(a) Every paper shall be dated and signed.

(b) Petitions, and answers ~~and appeals~~ shall be signed by the party and the party's attorney or agent, if the party is represented.

(c) All other papers shall be signed by the party's attorney or agent, if the party is represented, or by the party, if the party is not represented by an attorney or agent.

(d) Except as otherwise provided by statute or regulation, the board may accept for filing papers, documents, and exhibits that bear a copy of a signature.

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