

§ 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).

(e) “Board” means the New Motor Vehicle Board.

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

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

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

(i) “Director” means the Director of Motor Vehicles.

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

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

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

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

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

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

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

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

(r) "Party" or "Parties" includes the petitioner, protestant, respondent, department, appellant, director, or intervenor. For purposes of a peremptory challenge, an intervenor is not a party.

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

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

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

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

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

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

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

(z) "Stipulated decision and order of the board" means a proposed stipulated decision and order that has been adopted by the board pursuant to Vehicle Code section 3050.7. These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable 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.

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

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

(b) Each party, excluding an intervenor, is entitled to one peremptory challenge of the administrative law judge assigned to preside over the hearing on the merits of a petition as required by Vehicle Code section 3050(c) or the administrative law judge assigned to preside over the hearing on the merits of a protest as required by subdivision (d) of

Vehicle Code section 3050, based solely upon satisfying all of the following requirements:

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

(2) The peremptory challenge may be made by the party, the party's attorney, or authorized representative appearing in the proceeding, and shall be by written declaration substantially in the following form: "I am a party to [case name and number] and am exercising my right to a peremptory challenge regarding ALJ [name], pursuant to Section 551.12 and Government Code section 11425.40(d)"; and

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

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board no later than either 20 days from the date of the notice or order identifying the subsequent administrative law judge or 10 days prior to the date scheduled for the merits 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) A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes.

(f) Unless required for the convenience of the board or good cause is shown, a continuance of the merits hearing shall not be granted by reason of a peremptory challenge. Nothing in this regulation shall affect or limit the provisions of Vehicle Code section 3066(a), and 3080(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, 3066 and 3080, Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11425.40, Government Code.