

STATE OF CALIFORNIA



MEMO

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

Date: October 28, 2015

From : WILLIAM G. BRENNAN
ROBIN P. PARKER
DANIELLE R. VARE

Subject: CONSIDERATION OF PROPOSED REGULATIONS

Assembly Bill 759 and 1178 take effect January 1, 2016. Therefore, the Board's regulations need to be updated to reflect the new recreational vehicle provisions in Article 5 of the Vehicle Code and the new export or sale-for-resale protest provisions in Article 6. The changes are limited to amending the definitions of protest and protestant, and adding a number of references to the new provisions in existing regulations. The majority of these changes are non-substantive.

SUBSTANTIVE CHANGES

Definitions (13 CCR § 550(v) and (w))¹

The definition of "protest" and "protestant" need to be amended to reflect an association protest since it is not filed by a franchisee.

NON-SUBSTANTIVE CHANGES

The non-substantive changes incorporate the new provisions in the text and/or authority and reference in Sections 551.8, 551.12, 553.40, 590, 591 and 592.

If the Board adopts the proposed regulatory changes, the staff will proceed with the rulemaking process as delineated in Government Code section 11340, et seq. Updates concerning the status of the rulemaking process will be provided at future Board meetings during the Administrative Matters portion of the Executive Director's Report.

This matter is being agendaized for consideration at the November 12, 2015, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197, Robin at (916) 323-1536, or Danielle at (916) 327-3129.

cc: Glenn Stevens, President

¹ On October 20, 2015, the Office of Administrative Law approved the case management rulemaking packet. Although these changes are not effective until January 1, 2016, they are reflected in the proposed text.

Proposed Amendments - Substantive Changes

§ 550. Definitions.¹

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

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seeking action or ruling by the board.

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

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

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

(t) "Petitioner" means any person, including a board member, who files a petition seeking consideration by the board 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. A protest also means an action filed with the board by an association pursuant to Vehicle Code section 3085.

(w) "Protestant" means any licensed new motor vehicle dealer as defined in Vehicle Code section 426 who files a protest with the board. For purposes of Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.

(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, and 3085, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

Proposed Amendments - Non-Substantive Changes

§ 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, 3081, and 3085.4 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, 3080, and 3085.2, 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.

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

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

(b) In any proceeding other than those relating to applications for temporary relief or interim orders, each party is entitled to only one peremptory challenge of the assigned administrative law judge, 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 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 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) The peremptory challenge shall be served on opposing parties.

(c) If a party obtains the removal of the assigned administrative law judge, either by way of peremptory challenge, or for cause under Section 551.1, any other party shall have the right to a peremptory challenge of the subsequently assigned administrative law judge provided that the party complies with subparagraphs (b)(2)-(3), above. This latter peremptory challenge shall be filed with the board no later than either 20 days from the date of the notice or order identifying the subsequent administrative law judge or 10 days prior to the date scheduled for the hearing, whichever is earlier.

(d) No peremptory challenge shall be considered or granted if it is not made within

§ 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,~~ or 3085 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,~~ 3080, 3085, and 3085.2, Vehicle Code.

§ 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), ~~and 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.