



R O S T E R
NEW MOTOR VEHICLE BOARD

2415 1st Avenue, MS L242
Sacramento, California 95818

<u>NAME</u>	<u>APPOINTING AUTHORITY</u>	<u>STATUS</u>
Anne Smith Boland Term exp. 1-15-27	Governor's Office	Dealer Member
Ashley Dena Term exp. 1-15-26	Governor's Office	Dealer Member
Kathryn Ellen Doi Term exp. 1-15-25	Governor's Office	Public Member
Ardashes (Ardy) Kassakhian Term exp. 1-15-26	Senate Rules Committee	Public Member
Bismarck Obando Term exp. 1-15-26	Governor's Office	Public Member
Brady Schmidt Term exp. 1-15-25	Governor's Office	Dealer Member
Jacob Stevens Term exp. 1-15-27	Governor's Office	Public Member

2415 1st Avenue, MS L242
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dmvpublicaffairs@dmv.ca.gov

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
A G E N D A
GENERAL MEETING

West Fresno Center
Multi-Purpose Room, A-127
Fresno City College
600 E. Church Avenue
Fresno, California 93706
(559) 442-5700

February 28, 2025

Please note that Board action may be taken regarding any of the issues listed below. As such, if any person has an interest in any of these issues, they may want to attend.

The Board provides an opportunity for members of the public to comment on each agenda item before or during the discussion or consideration of the item. (Gov. Code § 11125.7)

1. **9:45 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Pledge of Allegiance.**
4. **10:00 a.m. Tour of the Advanced Transportation Center (long pants and closed toed shoes are required to enter the laboratory area) - Board Development Committee.**
5. **Approval of the Minutes from the August 9, 2024, General Meeting, August 9, 2024, Meeting of the Ad Hoc Committee on Equity, Justice and Inclusion, November 1, 2024, Special Meeting, November 1, 2024, General Meeting, and November 1, 2024, Meeting of the Ad Hoc Committee on Equity, Justice and Inclusion.**

6. **2025 Election of Board President and Vice President - Executive Committee.**
7. **Annual review and appointment of Committee members to the Administration Committee, Board Development Committee, Committee on Equity, Justice and Inclusion, Fiscal Committee, Government and Industry Affairs Committee, Legislative Committee, Policy and Procedure Committee, and Ad Hoc Committee to Review the Mission and Vision Statements, by the incoming Board President.**
8. **Appointment of Board Member designee in compliance with the Board's 1997 "Revised Board Policy Regarding Representation in Court Actions," by the incoming Board President.**
9. **Consideration of presentation of Resolution to Karthick Ramakrishnan, former Public Board Member.**
10. **Consideration of presentation of Resolution for Marilyn Wong's more than 40 years of service as a Hearing Officer, Administrative Law Judge, and the Board's Designated Mandatory Settlement Conference Judge from 2017 to 2024.**
11. **Consideration of the revised *Guide to the New Motor Vehicle Board* to include information on statutory and regulatory changes - Administration Committee.**
12. **Update on Board Development Activities - Board Development Committee.**
13. **Board member education concerning changes to the Administrative Procedure Act and Bagley-Keene Open Meeting Act - Board Development Committee.**
14. **Board member education concerning changes to the Political Reform Act and Public Records Act - Board Development Committee.**
15. **Update concerning the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, and the resultant Corrective Action Plan - Executive Committee.**
16. **Report on the Board's financial condition for the 2nd quarter of Fiscal Year 2024-2025 and other related fiscal matters - Fiscal Committee.**
17. **Consideration of out-of-state travel plans for fiscal year 2025-2026 - Fiscal Committee.**
18. **Discussion and consideration of who will attend the out-of-state trips for the 1st half of fiscal year 2025-2026 that were approved by the Board - Executive Committee.**

19. **Discussion of the 2025 New Motor Vehicle Board Industry Roundtable focusing on industry services - Government and Industry Affairs Committee.**
20. **Discussion concerning pending legislation - Legislative Committee.**
21. **Discussion and consideration of proposed revisions to the assignment of cases to exclusively use the Office of Administrative Hearings for all merits hearings - Policy and Procedure Committee.**
22. **Discussion and consideration of appointing Robin Parker the Board's Designated Mandatory Settlement Conference Hearing Officer - Policy and Procedure Committee.**
23. **Discussion and consideration of proposed regulatory amendments to Section 551.19 (Motions; Form, Briefing, and Hearings) of Title 13 of the California Code of Regulations - Policy and Procedure Committee.**
24. **Consideration of 2025 Rulemaking Calendar - Policy and Procedure Committee.**
25. **Annual report concerning Board adopted policies - Policy and Procedure Committee.**
26. **Annual report on the assignment of cases to Administrative Law Judges - Policy and Procedure Committee.**
27. **Consideration of the *Export or Sale-For-Resale Prohibition Policy Protest Guide* (Vehicle Code section 3085, et seq.) - Policy and Procedure Committee.**
28. **Consideration of revisions to the *Informational Guide for Manufacturers and Distributors*, which outlines their obligations to provide notices, schedules, and formulas mandated by the California Vehicle Code and Civil Code to the New Motor Vehicle Board and/or impacted dealers - Policy and Procedure Committee.**
29. **Report on the 3rd Annual CalSTA (California State Transportation Agency) Leadership Summit by Tim Corcoran, Executive Director.**
30. **Executive Director's Report.**
 - A. Administrative Matters.
 - B. Case Management.
 - C. Judicial Review.
 - D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
 - E. Other.
31. **Public Comment. (Gov. Code § 11125.7)**

32. **Adjournment.**

To request special accommodations for persons with disabilities at this or any future Board meeting or to request any accommodation for persons with disabilities necessary to receive agendas or materials prepared for Board meetings, please contact Alex Martinez at (916) 445-1888 or Alejandro.martinez2@dmv.ca.gov.



Memorandum

Date : FEBRUARY 13, 2025

To : ALL BOARD MEMBERS

From : TIMOTHY M. CORCORAN

Subject : UPCOMING EVENTS

The following highlights the upcoming Board and industry events:

- February 28, 2025, General Meeting (Fresno)
- March 26, 2025, California New Car Dealers Association's (CNCDA) Dealer Day (Sacramento)
- March 26, 2025, Special Meeting (Sacramento) - placeholder
- March 27, 2025, Industry Roundtable (Sacramento)
- August 1, 2025, General Meeting (Glendale)
- Fall 2025 National Association of Motor Vehicle Boards and Commissions (NAMVBC) Fall Conference (Arizona or another bordering state)
- November 21-30, 2025 Los Angeles Auto Show (Los Angeles Convention Center)
- December 12, 2025, General Meeting (San Diego)

If you have any questions or concerns about any of the upcoming Board meetings, please do not hesitate to contact me at (916) 244-6774.

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on August 9, 2024, at the Department of Motor Vehicles (“DMV”) Headquarters in Sacramento in the Assembly Room.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 10:04 a.m.

2. ROLL CALL

Board Members Present: Anne Smith Boland
Ashley Dena
Kathryn Ellen Doi
Ardashes “Ardy” Kassakhian
Jacob Stevens

Board Members Not Present: Bismarck Obando
Brady Schmidt

Board Staff Present: Timothy M. Corcoran, Executive Director
Kim Vaye, Assistant Director and Equity Officer
Robin P. Parker, Chief Counsel
Jason Rose, Senior Staff Counsel
Suzanne Luke, Senior Administrative Services Analyst
Alejandro Martinez, Legal Program Analyst
Navpreet (Penny) Bhatti, Administrative & Consumer Services Analyst
Rabia Sadiq, Staff Support and Public Services Analyst

Mr. Corcoran indicated that a quorum was established for general business.

3. PLEDGE OF ALLEGIANCE

President Kassakhian led the members and staff in the Pledge of Allegiance.

4. **INTRODUCTION AND WELCOME OF NEWLY HIRED ASSISTANT DIRECTOR AND EQUITY OFFICER, KIMBERLEE VAYE**

President Kassakhian welcomed newly hired Assistant Director and Equity Officer Kimberlee Vaye. Mr. Corcoran provide the members with Ms. Vaye's background:

Kim Vaye started with the State of California in 2010 with the Department of State Hospitals and worked within the California Department of Corrections and Rehabilitations in 2019 as a music therapist, supervising rehabilitation therapist, and program director. She then worked with the California Department of Transportation as a Discipline Services Manager where she led the Caltrans District 10 Equity Diversity Inclusion task force. As the task force lead, Kim worked with internal staff and external partners to advance equity in the workplace and within District 10 communities.

Kim's work at Caltrans inspired her to pursue an opportunity to work at the California Commission on the Status of Women and Girls where she was a program director partnering with the office of the first partner and California partners project on the California equal pay pledge and starting the commission's first statewide Youth Advisory Counsel. At the commission, Kim created spaces where people could discuss practices and policies affecting women and girls, ensure individual voices were heard and empower everyone to speak their minds while working towards collective action.

Prior to state service, Kim worked in Minneapolis as a music therapist working with families to disrupt intergenerational cycles of poverty, adversity and trauma within culturally relevant mental health and educational programs.

Kim holds a Bachelor of Science in music therapy, a Master of Arts in music therapy and a Master of Science in management and leadership. Kim is also an ambassador for growing unity, inclusion, diversity and equity with the Greater Stockton Chamber of Commerce.

Ms. Vaye commented that she's had the privilege of meeting with staff from California State Transportation Agency (CalSTA), DMV, some Board members, and Board staff. These meetings and conversations have given Kim a sense of the Board, its areas of responsibility, and its strengths and weaknesses. Kim began working with the Board staff to increase communication amongst themselves and with the Board's colleagues at DMV to create effective and efficient processes in all areas of responsibility including fiscal, personnel, facilities, and support. Kim looks forward to working with everyone to achieve the goals and objectives in the Strategic Plan and advise the Ad Hoc Committee on Equity, Justice and Inclusion.

Member Stevens was part of the interview committee with CalSTA Undersecretary Tollefson and noted that Kim "wowed" them.

5. **APPROVAL OF THE MINUTES FROM THE APRIL 25, 2024, GENERAL MEETING, AND JUNE 28, 2024, SPECIAL MEETING**

Member Doi moved to adopt the April 25, 2024, General meeting minutes and June 28, 2024, Special Meeting Minutes. Member Dena seconded the motion. The motion carried unanimously.

6. **PRESENTATION OF RESOLUTION TO RYAN FITZPATRICK, FORMER DEALER BOARD MEMBER**

At the April 25, 2024, General meeting, the members unanimously moved to present Ryan Fitzpatrick, former Dealer Member, with a Resolution in appreciation of his dedication and service to the Board and the State of California. Mr. Fitzpatrick indicated that he was going to cherish the Resolution as he cherished his time on the Board. He learned so much from the members. Ryan stated that Mr. Corcoran was amazing.

President Kassakhian thanked Mr. Fitzpatrick for his input, fresh perspective, and passion for the industry. President Kassakhian learned a lot from Ryan and wished him great success in all his endeavors.

7. **PRESENTATION OF RESOLUTION TO THE CALIFORNIA NEW CAR DEALERS ASSOCIATION TO COMMEMORATE THEIR 100TH ANNIVERSARY**

At the April 25, 2024, General meeting, the members unanimously moved to present a Resolution to the California New Car Dealers Association (CNCDA) to commemorate their 100th Anniversary. Anthony Bento, Chief Legal Officer, and Autumn Heacox, Director of Communications and Marketing, received the Resolution on CNCDA's behalf.

President Kassakhian congratulated the CNCDA on its important milestone.

Mr. Bento thanked the Board for the Resolution. He remarked about the many changes in California over the past 100 years and looked forward to the future.

Mr. Corcoran remarked that in three different governmental roles all dealing with the motor vehicle industry, he's had the pleasure and opportunity to work with CNCDA. And specifically with Mr. Bento who has been honest and goes above and beyond.

President Kassakhian stated that he looks forward to working together with CNCDA to educate the public about the industry, the Board, and the DMV.

8. **APPOINTMENT OF VICE CHAIR TO THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, BY THE BOARD PRESIDENT**

At Member Doi's suggestion, President Kassakhian appointed Jake Stevens as the Vice Chair of the Ad Hoc Committee on Equity, Justice and Inclusion.

9. **INTRODUCTION AND WELCOME OF CHRISTINA SPAGNOLI, ASSISTANT CHIEF DEPUTY DIRECTOR, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

President Kassakhian welcomed Assistant Chief Deputy Director Christina Spagnoli of the Department of Motor Vehicles. Mr. Corcoran provided the members with her background:

Christina Spagnoli was appointed Assistant Chief Deputy Director in February 2024. She oversees department governance, process improvement, performance management, organizational change management, and risk management while ensuring organizational efficiencies.

Christina brings more than 17 years of experience to the DMV working in politics, policy, and the public sector. Before joining the DMV team, Christina served as Senior Advisor to the Secretary and as Deputy Secretary of Legislative Affairs, at the Government Operations Agency.

Christina earned a Bachelor of Arts in English from Sacramento State University and is alumni of the Panetta Institute for Public Policy and Jesse M. Unruh Assembly Fellowship.

Assistant Chief Deputy Director Spagnoli remarked that she was happy to be at the meeting because of the Board's shared goal of serving Californians. She noted the members have strong backgrounds in business mixed with public service which makes sure constituents are served in dispute resolution. Christina shared her background and strong interest in community involvement. Based on her own experience, she understands the impact of a system not working when vulnerable and living paycheck-to-paycheck. For her, public service is important in terms of giving back, to be effective, and influence policy.

In response to Member Doi's question, Assistant Chief Deputy Director Spagnoli touched on several top projects she was working on including process improvement by not only identifying problems but identifying solutions organization wide and enterprise wide. Her team is also looking at process improvements in implementing Assembly Bill 60 (undocumented Californian's seeking a driver's license). Additionally, Christina is looking internally at DMV's employee experience and meeting their needs as expressed in various communications and surveys. Making sure employees receive the support they need and continually improving processes, so they are not stretched too thin.

Mr. Corcoran noted how his conversations with Christina reflect her spirit of embracing organizational change management and how to make sure employees are happy and fulfilled in their jobs so they can best represent DMV.

There was no Board action as this matter was for information only.

10. **CONSIDERATION OF PRESENTATION OF RESOLUTION TO ANTHONY M. SKROCKI, DESIGNATED LAW AND MOTION ADMINISTRATIVE LAW JUDGE**

Member Stevens moved to present a Resolution to Administrative Law Judge Anthony M. Skrocki in recognition of his contribution to the New Motor Vehicle Board. Member Doi seconded the motion. The motion carried unanimously.

11. **DISCUSSION AND CONSIDERATION OF THE BOARD'S MISSION AND VISION STATEMENTS - EXECUTIVE COMMITTEE**

The members were provided with the Board's current Mission and Vision Statements. Mr. Corcoran stated that each year the Board reviews its mission and vision statements but typically the statements are not amended. Since it has been about five years since the last substantial amendment and there are a number newer Board members and staff, it is a good time to review the statements. The last time the statements were amended, it began with the creation of an ad hoc committee and appointment of two members so they could participate in formulating a draft that would be brought to the full board for discussion.

Member Doi suggested the Board look at the statements with an equity, justice and inclusion lens in light of Ms. Vaye's new role as the Board's Equity Officer.

12. **DISCUSSION AND CONSIDERATION OF CREATING AN AD HOC COMMITTEE TO REVIEW THE BOARD'S MISSION AND VISION STATEMENTS, BY THE BOARD PRESIDENT**

President Kassakhian created an Ad Hoc Committee to review the Board's Mission and Vision Statements consistent with the recently adopted Strategic Plan 2024-30.

13. **APPOINTMENT OF MEMBERS TO THE AD HOC COMMITTEE TO REVIEW THE BOARD'S MISSION AND VISION STATEMENTS, BY THE BOARD PRESIDENT**

President Kassakhian appointed himself as chair of the Ad Hoc Committee to Review the Board's Mission and Vision Statements and Member Stevens as a member.

14. **CONSIDERATION OF NOMINEE FOR THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD RECIPIENT AS RECOMMENDED BY THE BOARD DEVELOPMENT COMMITTEE**

At the July 18, 2000, General Meeting, the members adopted an Employee Recognition Award Program to recognize staff for their accomplishments. The program was renamed the Solon C. Soteris Employee Recognition Award. The Board Development Committee recommended this year's Solon C. Soteris Employee Recognition Award be awarded to Administrative Law Judge Anthony M. Skrocki and Chief Counsel Robin Parker in recognition of their exceptional leadership and contributions in developing legacy training materials, documents, videos, and resources for the benefit of the Board's current and future staff, attorneys, Administrative Law Judges, and stakeholders.

Mr. Corcoran commented that most often this award is referred to as the employee of the year award. This year, it might be more accurately titled the Lifetime Achievement Award and not just for the contributions of one, but for two individuals that are so important to the Board and have given so much.

Member Doi added that as the attorney member of the Board for the last 10 years, the work Judge Skrocki and Robin have done to support the adjudicative function of the Board is so valuable and excellent. As the Board moves to a different model, they laid the groundwork for the continued excellence of the product that comes out in the decisions, the consistency, and the credibility of the Board.

Ms. Parker thanked Mr. Corcoran and the members for this nomination.

Member Stevens moved to adopt the Committee's recommendation. Member Smith Boland seconded the motion. The motion carried unanimously.

Ms. Parker indicated that at the next Board meeting, the Resolution and this Employee Recognition Award will be presented to Judge Skrocki virtually.

15. **UPDATE ON BOARD DEVELOPMENT ACTIVITIES - BOARD DEVELOPMENT COMMITTEE**

The members were provided a memo from Tim Corcoran concerning Board development activities. Mr. Corcoran noted that with the Committee's suggestions, the following additional topics were added to the memo:

- Presentations from dealer and manufacturer attorneys on common disputes between, and differing perspectives of, franchisees and their franchisors.
- Presentation on industry strategies to assure ZEV profitability, by dealer and manufacturer representatives.
- Presentation on implementation of alternative fuel vehicles in mass transit.
- Presentations highlighting local efforts to make communities ZEV-ready, which is already incorporated into the Board's Strategic Plan.

There was no Board action as this matter was for information only.

16. **REVIEW AND CONSIDERATION OF BOARD DELEGATIONS IN COMPLIANCE WITH THE 1996 PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION & HOUSING AGENCY - EXECUTIVE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker updating the Board delegations that were originally adopted in 1997 in compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency.

As indicated in the memo, the revised delegations pertain to:

- Legislative changes effective January 1, 2023 (Assembly Bill 2956) deleting obsolete references to appeals in Section 3008. (Stats. 2022, Ch. 295)

- The discretion given to the Executive Director to remove an Administrative Law Judge from an assignment log based on performance. (April 28, 2023, General Meeting)
- Recruitment and hiring practices designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination. (September 21, 2023, General Meeting)
- Review by the Ad Hoc Committee on Equity, Justice, and Inclusion of all new and revised policies prior to Board action in order to further institutionalize equity within Board programs. (September 21, 2023, General Meeting)
- Legislative changes effective January 1, 2024 (Assembly Bill 473) that added three new protests to Section 3065.3. (Stats. 2023, Ch. 332)
- The Board adopted Strategic Plan June 2024-30. (April 25, 2024, General Meeting)
- The discretion granted to the Executive Director to take action responsive to the objectives. (April 25, 2024, General Meeting)
- Personnel duties in the Delegation of Administrative Duties were updated to reflect the newly created Assistant Director and Equity Officer position.

Member Stevens moved to adopt the Board delegations as amended. Member Smith Boland seconded the motion. The motion carried unanimously.

17. **REPORT ON THE BOARD'S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

- a. Report on the Board's Financial Condition through the 3rd quarter of Fiscal Year 2023-2024.
- b. Report concerning the Board's collection of its Annual Board Fee.
- c. Status report concerning the Board's collection of the Arbitration Certification Programs' annual fee.
- d. Discussion and consideration of the Board's proposed budget for the current fiscal year.

The members were provided with a memo from Tim Corcoran, Kim Vaye, and Suzanne Luke. Mr. Corcoran read the following statement:

First, I want to say that the issue I am going to bring to your attention here today is serious but has been identified in time to be addressed without harm to the Board's stakeholders and constituents.

Second, this issue was initially identified approximately three weeks ago, and fact-finding activities have been underway since that time with new information revealed each day. As recently as three days ago we have discovered new, significant details. This means our understanding of the root cause has only this week become clear and, therefore, the plans to

mitigate the concern, while well underway, are being finalized. While I have a great deal of information to share today, and good reason to be optimistic about our plans to resolve these issues fully, a comprehensive solution will be presented at our next General Meeting in November.

Third, and importantly, the fault lays entirely with me. This Board, and the public, rely on me as the Board's Chief Executive Officer, to deliver timely and accurate information. Arguably, this fundamental truth is most critically applicable to my presentation of the Board's financial reports. These reports communicate our organizational health, assuring we can continue providing our essential governmental services without fail. I have provided erroneous information to you. No caveat and no excuses.

With that said, I will now walk you through what we know, what it means, and our planned next steps.

As you know, we present to the Board on a quarterly basis a report in memo format on the Board's Financial Condition. To avoid confusion later, as this terminology is similar to the name of another financial document that is key to this discussion, I am going to refer to these memos as the Fiscal Reports.

In these Fiscal Reports, I share with the Board several key data points:

- Beginning Balance;
- Revenue (fiscal year-to-date);
- Total Resource Balance;
- Total Revenue Received in Prior fiscal year;
- Fiscal year Expenditures displayed by fiscal quarter;
- Total Appropriation;
- Amount of Appropriation Remaining; and
- Percentage of Appropriation Remaining.

While all the data is valuable for the purpose of monitoring the Board's financial health, one number is particularly critical, the Beginning Balance, because it's depletion below a certain threshold signals the need to begin considering adjustments to revenue, expenditures, or both. Historically, we have enjoyed a relatively steady Beginning Balance equal to or greater than our entire annual appropriation or budget. This means that as long as our revenue each year matches our expenditures, that Beginning Balance amount would remain in the account at the end of the fiscal year assuring a quite healthy reserve for economic uncertainties. In other words, if the Beginning Balance equals our entire annual budget, we would be able to operate for an entire year without collecting any revenue at all. To have an entire year in reserve is unusual. A very high target compared to many other agencies who more typically look for up to three months in reserve. But, based on our unique business model, this "12 months in reserve" target is reasonable with workload directly related to the number of protests filed and more to the point, the number of merits hearings afforded. Our temporary

costs can fluctuate more dramatically than that of other agencies because of retired annuitants, Administrative Law Judge hours, or in some cases now Office of Administrative Hearing (OAH) billings.

Next, Mr. Corcoran displayed charts and fiscal memos presented at prior Board Meetings (September 21, 2023, December 8, 2023, and April 25, 2024) to illustrate the above along with other key data points to determine if or when action is needed to shore up the fund, adjust spending and/or seek a budget change proposal.

Mr. Corcoran stated the Board's next steps as follows:

1. Continue working with DMV Budgets to develop a fee increase proposal, which is accomplished through a regulatory action. We have been advised, since we anticipate an increased cost of doing business with OAH serving as at least one of our merits hearing providers, to project those additional costs so that the new fee amount contemplates this increased spending as well as addressing the current shortfall. Per the guidance of the Board's Fiscal Committee, we will prepare a proposal for the Board's consideration at the November General Meeting. DMV is actively engaging the Department of Finance to inform and receive guidance to assure as efficient process as possible. Stakeholders/fee-payers associations such as those representing dealers, manufacturers, and distributors will be contacted to advise of this necessity and to seek support in the event a regulation change is ultimately pursued.
2. Further, beyond the obvious checks and balances that must be implemented, there is a substantial opportunity to overhaul our entire internal budgeting and accounting processes. We have historically been reliant on external expertise and consult to answer even relatively simple questions from the Board on state budget and accounting processes. This emergency has afforded me, and the entire Board leadership and administrative staff a very robust education. Work is underway to create detailed allotments, recurring reporting processes, expense tracking procedures, balancing processes, and improved quarterly reporting to the Board. An external audit will be incorporated into the process as well in consult with DMV Budget and Accounting leadership, to assure that our reports to the Board are routinely scrutinized for accuracy by an independent expert. All of this will be developed under the guidance and observation of the Board's Fiscal Committee.

President Kassakhian stated that this situation was the result of an accounting and clerical error, but no money was spent inappropriately.

President Kassakhian asked Mr. Corcoran to explain where the erroneous figures came from. Rather than sourcing Fund Condition Statements directly from the Department of Finance, staff were instead relying on contacts within DMV to provide the data. At one point starting in April 2023, staff began sourcing it from the incorrect DMV personnel and instead received figures obtained from accounting software used only for agency-level

expenditure and revenue tracking. This system does not record account transfers, debits or deposits outside the agency. Specifically, statewide debits such as Supplemental Pension Payments, transfers for Covid Response Funding, and most significantly Statewide General Administrative Expenditures, also known as Pro Rata. Therefore, the figure obtained from DMV and then presented in Fiscal Reports as the Beginning Balance for each report since April 2023, were entirely incorrect.

In response to President Kassakhian's follow-up question, Mr. Corcoran indicated that no funds were missing. Every dollar that was received, spent or transferred is accounted for. This is not a case of missing funds. This is a case of misreporting. Staff reported an inaccurate beginning balance in fiscal reports to the Board, and that erroneous figure was substantially higher than the actual amount as reflected in the official fund condition statement. The fiscal report provided today shows the accurate fiscal year 2023-24 beginning reserve balance of \$1,818,000. Note, however, that the deficit continues to grow, and the Department of Finance shows the current fiscal year as beginning with \$1,478,000.

Member Stevens appreciated the update and is confident the Board can address this now that it is identified but it sounds like the Board needs to discuss its current fees and the process to achieve a fee increase. Mr. Corcoran explained the primary funding sources and indicated that spending cuts are insufficient to offset the shortfall. Revenue is not meeting the current annual appropriation let alone the additional expenditures the Board anticipates. The Board's fees do not have an automatic increase to keep up with inflation. Therefore, the only way to adjust the Board's fees is a regulatory action.

In response to Member Doi's question, Mr. Corcoran indicated that the Board's fees have not been adjusted in decades, and inflationary pressures along with various personnel-related costs implied there may be a need to pursue both a fee increase and budget augmentation. DMV's budgeting team shared the same concern. Mr. Corcoran stated that although highly dependent on outside factors but with proper coordination already underway it is possible to secure an appropriate regulatory fee adjustment with an effective date within 12 months of Board approval. President Kassakhian stated the fee increase is mission critical.

Mr. Corcoran concluded that the Board needs a fee that will build back the reserves and stabilize the fund for as many years as possible. The Board is not in the business to make a profit but needs to fund its operations with enough reserve to carry it through times of economic uncertainty. At the November meeting, a specific proposal will be proposed for Board consideration. President Kassakhian and Member Doi suggested more frequent review of the Board's Annual Fees.

There was a brief discussion on the rulemaking process, potential public comments, and meeting with stakeholders before developing the regulation.

President Kassakhian thanked Mr. Corcoran for his candor and requested the Fiscal Committee and Board be apprised of the next steps.

There was no Board action as this matter was for information only.

18. **DISCUSSION CONCERNING PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

- a. Pending Legislation of Special Interest: None
- b. Pending Legislation of General Interest:
 - (1) Assembly Bill 1777 (Assembly Member Ting) - Autonomous vehicles.
 - (2) Assembly Bill 2286 (Assembly Members Aguiar-Curry, Friedman, and Kalra) - Vehicles: autonomous vehicles.
 - (3) Assembly Bill 2401 (Assembly Member Ting) - Clean Cars 4 All Program.
 - (4) Assembly Bill 3061 (Assembly Member Haney) - Vehicles: autonomous vehicle incident reporting.
 - (5) Senate Bill 915 (Senator Cortese) - Local government: autonomous vehicle service.
 - (6) Senate Bill 961 (Senator Wiener) - Vehicles: safety equipment.
- c. Pending Federal Legislation of General Interest: None

The members were provided with a memo from Tim Corcoran and Jason Rose concerning pending legislation. Mr. Rose reported that there is no legislation of special interest that directly affects the Board's laws or functions.

Mr. Rose discussed the bills of general interest that concern autonomous vehicles as follow:

- Assembly Bill 1777 is an autonomous vehicle bill that allows citations to the manufacturer or operator of the vehicle if there is no driver. If there is a driver, then the driver would be cited.
- Assembly Bill 2286 requires autonomous vehicle manufacturers to report collisions if there is bodily harm, property damage, or death.
- Assembly Bill 3061 requires autonomous vehicle manufacturers to report collisions, traffic citations, or disengagements.
- Senate Bill 915 authorizes cities with populations of 250,000 or greater or cities that share a border with those cities to enact ordinances regulating certain aspects of autonomous vehicle service operations.

Next, bills unrelated to autonomous vehicles were discussed by Mr. Rose as follows:

- Assembly Bill 2401 (Clean Cars 4 All Program) encourages incentives to retire older vehicles and to specifically provide outreach to low income and disadvantaged communities where they find a lot of older vehicles (20-plus years or older).
- Senate Bill 961 is a passive intelligence speed assistance device bill. When

speeds exceed 10 miles per hour over the limit, the driver gets a flashing light or an alert.

The last day for each house to pass bills before the final recess is August 31, 2024, and the last day for the Governor to sign or veto bills is September 30, 2024.

There was no Board action as this matter was for information only.

19. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notices Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Corcoran provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status.

Mr. Corcoran discussed the upcoming Industry Roundtable on March 27, 2025. He indicated that the State of the Industry discussion with Brian Maas and Curt Augustine did not occur in 2024 but hoped to get this scheduled in February 2025. The 50th Anniversary business cards for Board Members and Staff have been ordered and are forthcoming.

Lastly, Mr. Corcoran stated that the Board's planned move to DMV's childcare center (named for former DMV Director Doris Alexis) is no longer an option. DMV is considering re-opening the childcare center for its employees as an affordable option. Alternative space for Board staff is being explored at DMV and other sister departments under the CalSTA umbrella. Considering the fiscal restrictions discussed earlier, pursuing a lease is not viable.

Member Doi commented that she supports the idea of on-site childcare but does feel like the Board's staff have been extremely patient in working in the accommodations they currently have so she strongly encouraged Assistant Chief Deputy Director Spagnoli to consider the morale of the Board's staff and find workable space. Assistant Chief Deputy Director Spagnoli noted Member Doi's comments and understands the importance.

Ms. Parker indicated that the Public Members at the June 28, 2024, Special Meeting adopted the first Proposed Decision submitted by OAH. The deadline for either party to file a petition for writ of administrative mandate is August 12, 2024. Putnam Ford will file a petition for administrative mandate, which staff anticipated as the administrative record has been requested. The members will be updated once the Board is served. The hearing in the Putnam Ford warranty case was held for three days in the week of August 5, 2024. The hearing will resume on August 12, 2024.

Mr. Rose reported that Protest No. PR-2840-23 *Western Auto Experts v. Forest River* was dismissed. In three other protests dismissals are pending. A Motion to Dismiss was filed and set for hearing on October 3, 2024 (PR-2812-22 *San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America*). A new incentive program protest was filed the morning of the meeting.

In response to President Kassakhian's question, Ms. Parker indicated that a Proposed Decision will be considered in *Putnam Kia* at the November 1, 2024, meeting.

There was no Board action as this matter was for information only.

20. **PUBLIC COMMENT (Gov. Code § 11125.7)**

No additional public comment was presented.

21. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at 11:52 a.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Ardashes ("Ardy") Kassakhian
President
New Motor Vehicle Board

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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

MINUTES

The Ad Hoc Committee on Equity, Justice and Inclusion held a meeting on August 9, 2024, at the Department of Motor Vehicles Headquarters in Sacramento in the Assembly Room.

Kathryn Doi, Chair and Public Member called the meeting to order at 1:03 p.m.

2. ROLL CALL AND ESTABLISHMENT OF QUORUM

Ad Hoc Committee on Equity, Justice and Inclusion Members Present:

Kathryn Ellen Doi, Chair
Anne Smith Boland, Member
Ashley Dena, Member

Board Members Present:

Ardy Kassakhian (Public Member)

New Motor Vehicle Board ("Board") Staff Present:

Timothy M. Corcoran, Executive Director
Kim Vaye, Assistant Director and Equity Officer
Robin P. Parker, Chief Counsel
Jason Rose, Senior Staff Counsel
Suzanne Luke, Senior Administrative Services Analyst
Alejandro Martinez, Legal Program Analyst
Navpreet (Penny) Bhatti, Administrative & Consumer Services Analyst

Ms. Vaye indicated that a quorum was not established so no action could be taken. This meeting was for information only.

3. **INTRODUCTION AND WELCOME OF NEW COMMITTEE MEMBER, ASHLEY DENA**

Chair Doi welcomed newly appointed Ad Hoc Committee Member Ashley Dena.

4. **INTRODUCTION AND WELCOME OF NEWLY HIRED ASSISTANT DIRECTOR AND EQUITY OFFICER, KIMBERLEE VAYE**

Chair Doi welcomed Kim Vaye, the Board's newly hired Assistant Director and Equity Officer and provided the following remarks:

- Kim has worked for the State since 2010. Prior to coming onboard with Board, she was the Program Director for the California Commission on the Status of Women and Girls, headquartered in Sacramento.
- While at the Commission, Kim had the privilege of forming relationships with cities, counties, and non-profits, and for-profit businesses statewide on her work with the First Partners Office on the California Equal Pay Pledge and other community engagement initiatives.
- Kim formed the Commission's first ever Youth Advisory Council comprised of 26 girls and gender-expansive youth from all regions of California. Together, with the youth, Kim wrote a Girls Agenda highlighting policy and legislation in Healthcare, Education, and Safety, affecting girls and gender-expansive youth in California.
- Kim is extremely passionate and dedicated to diversity, equity, inclusion, and justice, and works to create accessible spaces where everyone feels a sense of belonging.
- This is not Kim's first time under the CalSTA-umbrella as Kim worked for Caltrans District 10 from 2019-2022.
- Kim is excited to join the team as we kick off the Board's Strategic Plan and especially eager to work with the Equity, Justice and Inclusion Ad Hoc Committee to advance initiatives.

5. **DISCUSSION AND CONSIDERATION OF PROPOSED COMMITTEE ITEMS TO BE PURSUED FROM SEPTEMBER 2024-AUGUST 2025**

- a) Create a Charter that includes the purpose of the Committee, membership, responsibilities, meetings, equity goals, and deliverables.

Ms. Vaye discussed the Charter as a living document that is updated annually and as needed if amendments and addendums are necessary. The Charter would include stated goal, roles and responsibilities, the number of meetings, and Ms. Vaye's responsibilities. Chair Doi stated that this Committee has the practice of meeting before or after a full Board meeting. Ms. Vaye indicated she will draft the Charter.

- b) Formally implement an equity lens assessment rubric to utilize when reviewing Board proposed new and amended policies.

Ms. Vaye discussed an equity lens assessment rubric and noted that there is no need to reinvent the wheel as there are already rubrics available. Ms. Vaye will draft a rubric for review at the next meeting.

- c) Equity Officer will establish an Equity Glossary of Terms to create a shared understanding with staff and Board, to be updated annually to remain accurate and relevant.

Ms. Vaye indicated that the Equity Glossary of Terms can draw from existing resources. It should be updated annually so there is a shared understanding of terms.

- d) Equity Officer will explore no-cost Diversity, Equity, Inclusion, Justice, and Accessibility training and development opportunities for staff and Board members.

Ms. Vaye will explore no-cost training for Board staff and is interested in what the Committee members are interested in learning more about.

- e) Explore writing land acknowledgments for Board meetings.

Ms. Vaye discussed that land acknowledgments should be intentional and not performative. We must start with self-reflection, do our research, and determine our end goal. Consider placement on the agenda - after the Pledge of Allegiance? Ms. Vaye commented that land acknowledgments should be thoughtful, do no further harm, and be written with a plan of action. In other words, what is our call to action?

6. **SELECTION OF AD HOC COMMITTEE MEETING DATES FOR THE REMAINDER OF 2024**

The next meeting is set for November 1, 2024.

7. **PUBLIC COMMENT (Gov. Code § 11125.7)**

Member Smith Boland mentioned that Ms. Vaye's guidance and expertise will help the Board experience "real things." Member Dena noted that consumer-based training provides great informational opportunities about programs and how to get the message out. Anthony Bento, Chief Legal Officer, California New Car Dealers Association remarked on raising public awareness of the affordable vehicles and utilities, which aligns with the auto industry.

No additional public comment was presented.

8. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 1:55 p.m.

Submitted by

KIMBERLEE VAYE
Assistant Director and Equity Officer

APPROVED: _____

Kathryn Ellen Doi, Chair
Ad Hoc Committee on Equity, Justice and Inclusion
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a Special meeting on November 1, 2024, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2nd Floor, Glendale, California 91206.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 8:38 a.m.

2. **ROLL CALL**

Public Members Present: Kathryn Ellen Doi
Ardashes “Ardy” Kassakhian
Bismarck Obando
Jacob Stevens

Dealer Members Present: Anne Smith Boland
Ashley Dena (arrived during the meeting after roll call)
Brady Schmidt (arrived during the meeting after roll call)

Board Staff Present: Timothy M. Corcoran, Executive Director
Kim Vaye, Assistant Director and Equity Officer
Robin P. Parker, Chief Counsel
Jason Rose, Senior Staff Counsel

Tammy Bayne, Administrative Law Judge

Mr. Corcoran indicated that a quorum was established for case management.

3. **PLEDGE OF ALLEGIANCE**

Member Kassakhian led the members and staff in the Pledge of Allegiance.

4. **ORAL PRESENTATION BEFORE THE PUBLIC MEMBERS OF THE BOARD**

KM3G INC., d/b/a PUTNAM KIA OF BURLINGAME v. KIA AMERICA INC.
Protest No. PR-2803-22

President Kassakhian reminded the Dealer Member in attendance and any others that may arrive, that they may not participate in, hear, comment or advise other members upon or decide Agenda Items 4-5.

President Kassakhian read the following statement “[c]omments by the parties or by their counsel that are made regarding any proposed decision, ruling or order must be limited to matters contained within the administrative record of the proceeding. No other information or argument will be considered by the Board. This is an adjudicative matter that will be deliberated on in closed Executive Session. Therefore, pursuant to subdivision (e) of Government Code section 11125.7, members of the public may not comment on this matter.”

Oral comments were presented before the Public Members of the Board. Gavin M. Hughes, Esq. of the Law Offices of Gavin M. Hughes represented Protestant. John J. Sullivan, Esq. and Jonathan R. Stulberg, Esq. of Hogan Lovells US LLP represented Respondent.

5. **CLOSED EXECUTIVE SESSION DELIBERATIONS**

Pursuant to Government Code section 11126(c)(3), Vehicle Code section 3008(a), and Title 13, California Code of Regulations, sections 581 and 588, the Board convenes in closed Executive Session to deliberate the decisions reached upon the evidence introduced in proceedings that were conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

Pursuant to Government Code section 11517(c)(2), the Board could adopt the proposed decision, make technical or other minor changes, reject the proposed decision and remand the case, or reject the proposed decision and decide the case upon the record.

CONSIDERATION OF PROPOSED DECISION

KM3G INC., d/b/a PUTNAM KIA OF BURLINGAME v. KIA AMERICA INC.
Protest No. PR-2803-22

Consideration of the Administrative Law Judge’s Proposed Decision, by the Public Members of the Board.

The Public Members of the Board deliberated in closed Executive Session. Member Obando moved to remand the Administrative Law Judge’s Proposed Decision for additional briefing and/or to open the record for additional evidence or testimony for the purpose of making a determination pursuant to subdivision (a) of Vehicle Code section

3065.4 “for a declaration of the franchisee’s retail labor rate.” Additionally, for the Judge to reconsider paragraphs 161-174 in the subheading entitled “[t]he Consequences of Putnam’s Failure to Conform its Submission to the Express Requirements of Section 3065.2” and paragraph 120. Member Stevens seconded the motion. The motion carried unanimously.

The Public Members returned to Open Session. President Kassakhian announced the decision in Agenda Item 5.

7. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 10:18 a.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Ardashes (“Ardy”) Kassakhian
President
New Motor Vehicle Board

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STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD
MINUTES

The New Motor Vehicle Board (“Board”) held a General meeting on November 1, 2024, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2nd Floor, Glendale, California 91206.

Ardashes (“Ardy”) Kassakhian, President and Public Member, called the meeting of the Board to order at 10:21 a.m.

Prior to taking roll, Mr. Corcoran read the following statement concerning the recent passing of Administrative Law Judge Marilyn Wong:

As many here are now aware, a member of our New Motor Vehicle Board family passed away last week.

Administrative Law Judge Marilyn Wong began her career with the Board in January of 1982. She served in every capacity we offer to a hearing officer or ALJ over the course of these four-plus decades.

Marilyn loved settlement conferences best, particularly for the opportunity they afforded her to save each side valuable resources by arriving at a fair, and reasonably expected outcome to their dispute while avoiding the uncertainty and cost of a full evidentiary hearing. Marilyn truly thrived in this role, which she enjoyed as the exclusive designated hearing officer for Mandatory Settlement Conferences for these most recent eight years.

Marilyn spoke very highly of this Board and its staff every time we spoke. As is often the tragic case, it’s when we lose someone that we realize we did not speak nearly often enough.

Recently, we did have the occasion to talk, though. Just two weeks ago, in fact. Marilyn shared exciting news of the opportunity to spend more time with her young grandchild and, while she has stayed on the Board well into her retirement years for a love of the job and a true appreciation of the

mission, she would be looking forward to fully retiring at the end of the year for the best possible reason.

Plans were well underway for Marilyn to begin providing Robin Parker, our Chief Counsel and a designated New Motor Vehicle Board hearing officer herself, a refresher training on the conduct of Mandatory Settlement Conferences, including helpful hints that were part what Marilyn referred to as the “secret sauce” that made her so very effective. Also, plans were moving forward to honor Marilyn and each of our ALJs who have so respectably served this organization for so many decades. It was while awaiting Marilyn’s response confirming her availability for this celebratory event that we received a call, not from Marilyn but from her husband, David, sharing this devastating news.

I’ve read, and reread, my final emails to Marilyn so many times this week. Wishing I said more. Wishing I more fully said how much I value her as a member of the team and as a person. I hope saying this here can serve as some form of tribute to what Marilyn meant to me, to this Board, and to the industry she held in such high regard.

Through her decades of service, Judge Marilyn Wong has earned a reputation as a kind, thoughtful, and extraordinarily effective hearing officer and mediator. Even if one might disagree with Marilyn’s position on a particular issue before her, there was never any doubt as to whether she fully listened, endeavored to understand, and truly and deeply cared about her role, and this Board’s work.

I know I speak for the entire team when I say a big part of who we are has been lost with Marilyn’s passing, but we will carry on and honor her the best way we can by respecting this organization and valuing its mission the way she always did and by striving to match the same care she put into her work, knowing we each have the power to make a positive difference.

Mr. President, I kindly ask for a moment of silence for our colleague and our friend Judge Marilyn Wong.

The members, staff, and audience observed a moment of silence.

President Kassakhian noted the pain felt is strong for many members of our team and the fact they have been able to push through and carry on with the work of the Board is a testament to the organization but also the respect they all have for Judge Wong. In the City of Glendale, when a member of the community passes away that has made a significant impact, the highest honor bestowed upon them in these chambers is at the conclusion of the city’s business, the meeting is adjourned in their memory. As the meeting today is being held in Glendale, President Kassakhian asked his colleagues at

the conclusion of the meeting to adjourn the meeting in the memory of Judge Marilyn Wong.

2. **ROLL CALL**

Board Members Present: Anne Smith Boland
Ashley Dena
Kathryn Ellen Doi
Ardashes “Ardy” Kassakhian
Bismarck Obando
Brady Schmidt
Jacob Stevens

Board Staff Present: Timothy M. Corcoran, Executive Director
Kim Vaye, Assistant Director and Equity Officer
Robin P. Parker, Chief Counsel
Jason Rose, Senior Staff Counsel

Tammy Bayne, Administrative Law Judge

Mr. Corcoran indicated that a quorum was established for general business.

3. **PLEDGE OF ALLEGIANCE**

Former Dealer Member Ramon Alvarez C. led the members and staff in the Pledge of Allegiance.

4. **PRESENTATION OF RESOLUTION TO RAMON ALVAREZ C., FORMER DEALER BOARD MEMBER**

At the April 28, 2023, General meeting, the members unanimously moved to present Ramon Alvarez C., former Dealer Member, with a Resolution in appreciation of his dedication and service to the Board and the State of California.

Mr. Alvarez remarked that his contribution to the Board was nothing compared to Judge Wong as she was a catalyst to the Board. It was his sincerest honor to serve the State of California in the automotive sector that he loves so much and was honored to be at the meeting today.

Member Doi acknowledged how important Mr. Alvarez has been to the Board. She had the honor of serving as Vice President when he was President. It was a challenging time as the Board’s former Executive Director, Bill Brennan, passed away and Mr. Corcoran was appointed. Ramon handled that transition with grace and leadership. To Member Doi, this is one of Mr. Alvarez’s “crowning achievements of [his] tenure on the Board.” She thanked Mr. Alvarez and noted it has been an honor and pleasure serving with him and maintaining their friendship beyond their service on the Board.

Member Obando thanked Mr. Alvarez who now serves as the unofficial social director of the Board. Additionally, Member Obando commented that Mr. Alvarez is not only a friend but family as he has always been there for him.

Member Schmidt thanked Ramon for recommending him to the Board and for his friendship and mentorship. Member Schmidt values and treasures Mr. Alvarez's insight and knows he has brought much wisdom to this Board. The legacy left by Ramon is very strong and Member Schmidt thanked him for his service.

President Kassakhian thanked Ramon for his years of service to the Board, for his leadership in the industry, and for helping shape public policy. President Kassakhian congratulated Mr. Alvarez and thanked him on behalf of the Board and the State of California.

5. **VIRTUAL PRESENTATION OF RESOLUTION TO ANTHONY M. SKROCKI, DESIGNATED LAW AND MOTION ADMINISTRATIVE LAW JUDGE**

At the August 9, 2024, General meeting, the members unanimously moved to present Anthony M. Skrocki, Administrative Law Judge, with a Resolution in appreciation of his dedication and service to the Board and the State of California. Judge Skrocki was present at the meeting via Zoom as a reasonable accommodation.

Judge Skrocki thanked President Kassakhian and the members for this recognition and joined in recognizing Judge Wong. She was polite, friendly, cooperative, willing to do whatever she could, knowledgeable, and efficient. Judge Wong was a tremendous asset and a pleasure to talk to and work with.

Judge Skrocki remarked that although he has been with the Board for many decades, he has not interacted directly with the Board Members but has observed what they have accomplished. Judge Skrocki noted how impressed he was with the members' bios on the Board's website, and their dedication and impact upon the industry. Most people do not know this Board exists but there is not one case that does not have ripple effects that extend across thousands of people and across perhaps the entire industry and the county.

Member Doi stated that even though she has not met Judge Skrocki she feels like she knows him because of his amazing work on behalf of the Board. His impact has been "unspeakably tremendous," and the Board values his decades of experience and dedication. Member Doi noted how much Judge Skrocki is appreciated for what he has done and will continue to do for the Board. In response to Member Doi's question, Judge Skrocki told the story of how he began his career at the Board.

Ms. Parker said how much she appreciates Judge Skrocki as he is an absolute wealth of knowledge, is thoughtful, and has an answer for everything. Ms. Parker cannot imagine working if he was not a Judge for the Board as he does a tremendous job, is fair, an excellent listener, and so smart.

President Kassakhian remarked that Judge Skrocki's guidance in shaping many of the Board's decision has been foundational. The Board relies on his wisdom routinely and thanked him for all he has done for the Board and the State of California.

6. **VIRTUAL PRESENTATION OF THE SOLON C. SOTERAS EMPLOYEE RECOGNITION AWARD TO ADMINISTRATIVE LAW JUDGE ANTHONY M. SKROCKI AND ROBIN P. PARKER, CHIEF COUNSEL**

At the August 9, 2024, General Meeting, the Board selected Administrative Law Judge Anthony M. Skrocki and Chief Counsel Robin Parker as the recipients of the Solon C. Soteris Employee Recognition Award. This was in recognition of their exceptional leadership and contributions in developing legacy training materials, documents, videos, and resources for the benefit of the Board's current and future staff, attorneys, Administrative Law Judges, and stakeholders. Judge Skrocki was present at the meeting via Zoom as a reasonable accommodation.

Member Stevens thanked Robin for her patience with him and the Board. And, noted he depends on her work, guidance, and counsel and is grateful for it. Ms. Parker thanked everyone for the award and remarked that she is delighted to share it with Judge Skrocki.

President Kassakhian thanked Robin for her work by making sure the Board is prepared and ahead of the curve. Member Doi commented on the amount of hard work and "blood, sweat, and tears" Robin puts in for the Board. Member Obando echoed what the other members said. Judge Skrocki noted that Robin is a tremendous source of knowledge and the most organized person. Ms. Parker thanked everyone for their thoughtful comments and expressed her appreciation.

7. **EDUCATIONAL PRESENTATION ON THE AUTOMOTIVE FRANCHISE SYSTEM BY DARRYL HOLTER, PREVIOUS OWNER OF FELIX CHEVROLET AND AUTHOR OF *DRIVING FORCE* - BOARD DEVELOPMENT COMMITTEE**

President Kassakhian welcomed Darryl Holter, previous owner of Felix Chevrolet and author of *Driving Force*. Mr. Corcoran provided the members with his background:

Darryl Holter is the former Dealer Principal of the Downtown Los Angeles Auto Group, seven dealerships which were sold to the Lithia Group in 2017 and Felix Chevrolet, the oldest dealership in Los Angeles, which was sold to the Sierra Group in 2022. Holter served as Chairman and Director of the California New Car Dealers Association and the Greater Los Angeles New Car Dealers Association. He is the Founding Chair of the Figueroa Corridor Business Improvement District, an Adjunct Professor of history at the University of Southern California, the owner of Chevalier's Books, the oldest independent bookstore in Los Angeles, and a member of Local 47 of the American Federation of Musicians.

Mr. Holter noted that he was a historian before he became an automobile dealer. One day while working at Felix Chevrolet, he received a call from the motor car dealers association as they found a box of old stuff they were going to throw away. With this information and secondary materials, he realized there was no written history in America about how cars were merchandised in the earliest days of the industry. His book, *Driving Force*, is the first book to really explore this and is based on Los Angeles.

In addition to providing the members and staff with his book and article entitled "*The Origins of the American Automobile Franchise System*," Mr. Holter presented a fascinating overview of the auto industry in the early 1900s. The first automobile dealers in Los Angeles in 1897 were in bicycle shops on Main Street. In 1910, in downtown Los Angeles, there were 105 brands and 70 dealers. Figueroa Street is one of the longest streets in the world and became the historic auto row. In 1927, there were 52 new and used car operations on Figueroa and Flower Street. When Mr. Holter started in the auto industry there were five. By 1925, 75% of new and used cars sold in America were sold on payment plans; this number was 85% in Southern California.

In addition, Mr. Holter discussed the origins of the "Kelly Blue Book," memberships that provided maps and signage in Southern California, the Vehicle Act of 1913, and early franchise agreements. Darryl answered questions posed by the members such as his opinion of dealer-manufacturer relationships relative to the franchise agreement asked by Member Schmidt. Member Smith Boland, the great granddaughter of a 1917 car dealer in San Francisco, expressed her gratitude to Mr. Holter for all his time and effort documenting the stories of Los Angeles as they are like stories told by her family over the years. Member Doi thanked Darryl for finding and sharing these stories. President Kassakhian commented that he was grateful for Darryl's research and for sharing it with the Board.

There was no Board action as this matter was for information only.

8. **INTRODUCTION AND WELCOME OF CHRISTINA MICHEL, CHIEF OF INVESTIGATIONS, DEPARTMENT OF MOTOR VEHICLES - BOARD DEVELOPMENT COMMITTEE**

President Kassakhian welcomed Christina Michel, Chief of Investigations, Department of Motor Vehicles. Mr. Corcoran provided the members with her background:

Christina Michel leads the DMV Investigations Division, which conducts complex criminal, administrative, and civil investigations involving identity theft, financial and employee fraud, document counterfeiting, and illegal odometer and vehicle identification alterations. In her role, she spearheads modernization efforts and established a groundbreaking Data Forensics Unit.

Christina was appointed deputy director in September 2021, after serving as the division Area Commander of the Northern Special Operations in

which she supervised the Internal Affairs-north office and Investigative Analysis and Protected Records unit. She has been with the DMV since 2006, but her career spans more than three decades, starting as a U.S. Marine, transitioning to a 7-year tenure at Pepsi Cola and then joining the California Highway Patrol in 2002.

Chief Michel noted the recent reorganization at the Department of Motor Vehicles (DMV) that brought inspectors back into investigations. This allows more collaboration between inspectors and investigators. Licensing has been broken up so there is an operations part that controls the application process.

Chief Michel discussed that Investigations is modernizing and has a data forensic team. The volume of data allows analysts to go through it and look for fraud. As an example, Chief Michel reviewed vehicle transfers and how instead of being reactive DMV can be proactive. This helps DMV protect customers as it gives them an idea if a dealership is in trouble. DMV does not have to wait for customers to complain as they can address it sooner.

Smog requirements were also discussed and how customers change their address to live in smog exempt counties when they do not. The data available is amazing. It shows high-end cars being registered out-of-state to avoid sales taxes, so DMV is trying to combat this. Cloning VINs is a problem. Chief Michel noted that DMV is looking at vulnerabilities within its systems and how to move forward with altering laws.

Lastly, Investigations now has an online complaint portal, so complaints directly go to investigations rather than getting lost in the mail. They can communicate directly with consumers or complainants.

Member Smith Boland thanked Chief Michel for what Investigations does as it keeps bad actors out, takes care of the consumer, and keeps dealers honest.

Mr. Corcoran remarked that based on his background and familiarity with the industry, he was particularly interested in the admittedly antiquated statutes concerning changing technologies, the way cars are sold, and how consumers interact with dealers at the time of purchase and after. He wondered how open DMV and Chief Michel would be to front-end input from the industry on some of these statutory changes. Perhaps, the Board through its Government and Industry Affairs Committee, could join forces on this shared interest. Chief Michel was receptive to this suggestion.

Member Doi thanked Chief Michel for all she is doing and looked toward ways the Board could partner to help with the statutory changes. In response to Member Doi's question, three violations that Investigations is working on are failure of dealers to transfer title, stolen vehicles, and theft or fraud aspects of driver's licenses.

Member Stevens relayed his personal experience with failure to transfer and thanked Chief Michel for her efforts to modernize and digitize this process to make it user friendly for consumers.

There was no Board action as this matter was for information only.

9. **APPROVAL OF THE MINUTES FROM THE AUGUST 9, 2024, GENERAL MEETING, AND AUGUST 9, 2024, MEETING OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION**

Due to a delay in receipt of the transcript, this agenda item will be considered at the February 28, 2025, General Meeting.

10. **CONVERSION OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION TO A STANDING COMMITTEE, BY THE BOARD PRESIDENT**

President Kassakhian converted the Ad Hoc Committee on Equity, Justice and Inclusion to the Committee on Equity, Justice and Inclusion. President Kassakhian noted that he would like the delegations made to the Ad Hoc Committee transferred to the standing committee so as the staff looks at this in more detail, there may be matters that need to be addressed at a future meeting.

11. **APPOINTMENT OF PRIMARY AND ALTERNATE MEMBERS TO THE COMMITTEE ON EQUITY, JUSTICE AND INCLUSION, BY THE BOARD PRESIDENT**

President Kassakhian decided that every Board Member will also be a member on the Committee on Equity, Justice and Inclusion.

12. **UPDATE ON BOARD DEVELOPMENT ACTIVITIES - BOARD DEVELOPMENT COMMITTEE**

The members were provided a memo from Tim Corcoran concerning Board development activities. Mr. Corcoran commented that there were many fun educational presentations as indicated in the memo.

Ms. Vaye reminded the members that part of the Board's Strategic Plan is engaging more with communities and partnering with community-based organizations and others. She recently learned that the night prior to the Racial Equity Commission meetings they partner with a community-based organization and hold a meeting. The organization can provide translation services, meals, refreshments, and childcare. It is a good way to welcome the community and get input on what they are proud of and what they want to work on. These meetings provide an opportunity for the Commission discuss what it is working on. In the case of the Board, we could discuss our programs. Ms. Vaye thinks this is a great model for the Board to consider. One or two Board members could

participate with staff so it would not be a meeting. Additionally, Ms. Vaye discussed holding Board meetings in the Central Valley, Southern Central Valley, and other areas.

President Kassakhian thought this was a great idea. Member Doi thanked Tim and the staff for making the arrangements for the guests

There was no Board action as this matter was for information only.

13. **DISCUSSION AND CONSIDERATION OF PROPOSED INCREASES TO THE ANNUAL FEE PAID BY DEALERS, MANUFACTURERS, AND DISTRIBUTORS WITHIN THE BOARD'S JURISDICTION TO "FULLY FUND THE ACTIVITIES" OF THE BOARD. (VEH. CODE § 3016) - FISCAL COMMITTEE**

This matter was postponed at the request of Vice President Stevens until after the discussion in Agenda Item 15.

14. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS PERTAINING TO BOARD FEES - POLICY AND PROCEDURE COMMITTEE**

- A. Annual Board Fee (13 CCR § 553)
- B. Determination of Annual Board Fee. (13 CCR § 553.20)

This matter was postponed at the request of Vice President Stevens until after the discussion in Agenda Item 15.

15. **REPORT ON THE BOARD'S FINANCIAL CONDITION AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

- a. Report on the Board's Financial Condition for the 4th quarter of Fiscal Year 2023-2024.
- b. Report of the Board's Financial Condition for the 1st quarter of Fiscal Year 2024-2025 and the fiscal impact of utilizing the Office of Administrative Hearings to preside over merits hearings.
- c. Report concerning the Board's collection of its Annual Board Fee.

The members were provided with a memo from Tim Corcoran, Kim Vaye, and Suzanne Luke.

As indicated in the memo, the fourth quarter of Fiscal Year 2023-2024 began with a budget appropriation of \$2.153 million, beginning reserve balance of \$1.818 million, and ending reserve balance of \$1.639 million. Eighty percent of the appropriated budget for Fiscal Year 2023-2024 was expended (\$1.730 million).

The first quarter of Fiscal Year 2024-2025 (July through August) began with an appropriation of \$2.163 million. The reserve balance after August Expenditures is \$2.397 million. The Board expended 12% of its appropriated budget.

Ms. Vaye noted that most expenditures are for personnel. The Board is not paying rent, so there are significant cost savings with operating expenses and equipment. The members asked several questions concerning the reports and Board's fiscal condition including the reserve balance and the Board's pro rata share.

Member Schmidt suggested an additional table in the report that shows the beginning reserve balance at the start of the fiscal year, the ending reserve balance at the end of the fiscal year, and a column that shows the pro rata and other adjustments (positive or negative) with a revised total reserve balance, which would be the beginning reserve balance for the next fiscal year.

Mr. Corcoran explained one additional savings as departments are being directed to reduce spending by at least 7.95%. Staff are looking at reducing positions formerly held by office assistant staff that are now handled by technology and Teams tools. Ms. Vaye identified these vacant positions.

There was no Board action as this matter was for information only.

13. **DISCUSSION AND CONSIDERATION OF PROPOSED INCREASES TO THE ANNUAL FEE PAID BY DEALERS, MANUFACTURERS, AND DISTRIBUTORS WITHIN THE BOARD'S JURISDICTION TO "FULLY FUND THE ACTIVITIES" OF THE BOARD. (VEH. CODE § 3016) - FISCAL COMMITTEE**

The members were provided a memo from Tim Corcoran, Kim Vaye, and Penny Bhatti proposing increases to the Annual Fee paid by dealers, manufacturers, and distributors within the Board's jurisdiction to "fully fund the activities" of the Board.

As indicated in the memo, at its August 9, 2024, General Meeting, the Board determined that its operating fund had depleted below its desired 12-month reserve balance as a result of revenue shortfalls coupled with increased operating costs since the onset of the Covid-19 pandemic, and related supply chain challenges impacting new motor vehicle sales in California. Further, the Board predicted insolvency of the operating fund is likely to occur without an intervening action.

Most of the Board's revenue is derived from licensing fees collected from dealers of new motor vehicles and manufactures/distributors who distribute their new motor vehicles in California. The current Annual Board Fee per manufacturer or distributor is charged at a rate \$.45 per vehicle distributed in the State, with a minimum of \$300 per year, and the dealer licensing fee is \$300 per year.

If no action is taken, the fund is projected to become insolvent during Fiscal Year 28/29. The goal is to restore adequate funds in reserve, equal to the Board's annual expenditures. While the Board has significantly reduced operating costs, and continues to spend below its annual appropriation, those reductions on their own are insufficient to achieve the necessary alignment of revenue to expenditures.

Mr. Corcoran reported that this discussion and Agenda Item 14 are related but separate. Each concern the Board's consideration of pursuing an increase to the annual fee paid by new motor vehicle dealers, and manufacturers and distributors. In this item, the Board Members will consider whether to pursue a fee increase and, if so, what the increased amount should be. The next item asks for Board approval to begin the rulemaking process.

Mr. Corcoran explained that several options were explored but he is recommending the most conservative of these options, which would represent an increase of approximately 30% for new car dealers, manufacturers, and distributors. Under this option, the annual licensing fee paid by new motor vehicle dealers would increase from \$300 to \$400. For manufacturers and distributors, fees are instead paid on a per vehicle basis, currently set at \$.45 per vehicle distributed in the State. This fee would be increased by \$.15 to \$.60 per vehicle with a minimum amount of \$400.

According to Mr. Corcoran, this proposal addresses the immediate need without being so aggressive as to create a surplus. Relying on certain assumptions, this solution should allow the Board time to reassess the fund condition in the next 6-8 years to account for any significant economic or industry changes affecting revenue at that time. The Board's statutes controlling fee collection do not contain provisions allowing for an automatic, recurring adjustment to fees, such as one tied to CPI (Consumer Price Index). Rather, the Board must engage in the rulemaking process whenever a fee change is warranted to "fully fund the activities of the Board."

In response to Member Obando's question. Mr. Corcoran discussed the outreach to all impacted stakeholders prior to the meeting.

Member Schmidt suggested the fees be based on inflationary assumptions that look 10-12 years out so fees would be commensurate. Mr. Corcoran indicated that Ms. Vaye and her team included an assumed increase for inflation year over year so that is why more than one option was offered. Member Schmidt suggested a more aggressive fee increase by letting dealers and manufacturers absorb that now and protect the Board for a much longer time.

In response to Member Doi's question, Member Schmidt indicated he would be comfortable with Scenario 3 [fee increase of approximately 41% (\$.65 per vehicle with dealer and minimum manufacturer and distributor fees at \$425)].

Member Obando addressed the engagement and approval of the Department of Finance (DOF), which can be political. Mr. Corcoran indicated that if the DOF said "no"

to an aggressive proposal, then the Board would have to meet and could be back to the beginning of the rulemaking process. The Board needs to weigh the long-term viability and sustainability of its fund versus the immediate need to start building its reserve back with potential delays of another six months, which could result in insolvency before the fee increase is effective.

Member Doi inquired if the Board could authorize Scenario 3 but default to Scenario 2 (\$.60 per vehicle with dealer and minimum manufacturer and distributor fees at \$400). Member Schmidt discussed the unintended consequences of the Board's insolvency, which would increase costs for consumers, dealers, and manufacturers.

After further discussion, Member Doi moved to select Scenario 3 with the option to allow staff to propose Scenario 2, if necessary. In response to Member Smith Boland's question, Mr. Corcoran commented that with the Board's direction to pursue both scenarios and with Counsel's advice, staff would first try Scenario 3 and if that works then Scenario 2 is rendered moot. Member Stevens seconded the motion.

Prior to the vote, Ms. Parker suggested a fee increase range of \$.60 to \$.65 and \$400 to \$425 rather than adopting two scenarios with fixed fees. This results in the Board giving staff the broadest discretion with the Board's preference for the higher end.

Member Doi amended her motion to approve the dealer licensing fee increase within the range of \$400 to \$425 and the per vehicle fee within the range of \$.60 to \$.65 with a preference for the higher end. The minimum fee for manufacturers and distributors would be in the range of \$400 to \$425. Member Stevens accepted the amendments and seconded the amended motion. The motion carried unanimously.

Mr. Corcoran added the following statement for the ease of anyone reviewing the transcript or minutes later. The Board had a discussion relevant to this conversation where quarterly reports were discussed. The fee increases the Board is directing staff to pursue go a long way together with the Board's continued efforts to reduce expenditures as well. As reported earlier, the Board is spending well under its appropriation. And will continue to do so. Potential salary savings have been identified to further reduce those expenditures. The Board is not asking for additional fees while "not tightening [its] belt." It is doing that as well.

14. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS PERTAINING TO BOARD FEES - POLICY AND PROCEDURE COMMITTEE**

- A. Annual Board Fee (13 CCR § 553)
- B. Determination of Annual Board Fee. (13 CCR § 553.20)

The members were provided with a memo from Tim Corcoran and Robin Parker regarding proposed regulatory amendments pertaining to Board fees in Sections 553 and 553.20 of Title 13 of the California Code of Regulations.

With the action taken by the Board in Agenda Item 13, Ms. Parker suggested a potential motion as follows:

The Board adopts the proposed regulations with the dealer licensing fee of \$425 and the per vehicle fee of \$.65 for manufacturers and distributors with a minimum of \$425. The Board grants the Board staff discretion in consultation with the Executive Committee to reduce the fee to any number between \$400 and \$425 and \$.60 and \$.65. If this occurs, like with non-substantive regulatory changes, staff will bring this matter to the full Board at its next meeting.

If adopted, Ms. Parker noted this action would result in a new delegation so the Board adopted delegations will be amended at a future meeting.

Member Schmidt moved to adopt the motion outlined by Ms. Parker. Member Dena seconded the motion. The motion carried unanimously.

The proposed amendments are:

§ 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 ~~\$300.00~~ **\$425.00**, 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 ~~\$.45~~ **\$.65** 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 ~~\$300.00~~ **\$425.00**.

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 3016 and 11723, Vehicle Code.

§ 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 manufacturer 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 provided, however, that the fee to be paid by each manufacturer or distributor shall not be less than ~~\$300.00~~ **\$425.00**. The Board shall thereafter send a written notice by regular mail or electronic-mail 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 3050(a) and 3016, Vehicle Code.

President Kassakhian read the following statement into the record for the proposed regulatory changes:

Given the Board's decision to go forward with the proposed regulations, I hereby delegate [to] the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act.

Notice of the proposed rulemaking will be published in the California Regulatory Notice Register and will be sent to the Public Mailing List.

During the public comment period, I want to invite and encourage written and oral comments. Additionally, a public hearing at the Board's offices may be held to accept oral and written comments. By the Board instructing staff to go forward with the proposed regulations, this does not necessarily indicate final Board action.

If any written or oral comments are received, the full Board will consider the comments and reconsider the text of the proposed regulations.

Furthermore, [if] the staff decides that substantive modifications in the proposed text are necessary, the Board will consider those modifications at a noticed meeting.

However, non-substantive changes involving format, grammar, or spelling [suggested] by the Office of Administrative Law [or] the staff will not be considered by the Board because they are not regulatory in nature. It will

be considered by the Executive Committee and ultimately reported to the Board at a future meeting.

If there are no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

16. **DISCUSSION OF THE 2025 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Mr. Corcoran stated the 2025 Industry Roundtable is being held the day after the California New Car Dealers Association Dealer Day Event. Mr. Corcoran commented that staff hope to capitalize on all the dealers in town and encourage them to attend the Roundtable. The Roundtable is being held closer to the Capitol at the Natural Resources Agency; the auditorium can accommodate up to 200 people.

This event is a return to the Board's roots with updates from DMV and the Board's transition to the Office of Administrative Hearings. There is also an opportunity to have a more engaging experience by creating new partnerships and collaborations. Mr. Corcoran watched a recent Little Hoover Commission meeting in which it had speakers discussing public, private philanthropic partnerships and how that is not only acceptable but encouraged. Mr. Corcoran would like to use the afternoon session at the Roundtable to create these unique government connections.

The members were provided with the draft RSVP. President Kassakhian suggested a word change from "debate" to "discuss."

There was no Board action as this matter was for information only.

17. **DISCUSSION CONCERNING ENACTED LEGISLATION - LEGISLATIVE COMMITTEE**

- a. Enacted Legislation of Special Interest: None
- b. Enacted Legislation of General Interest:
 - (1) Assembly Bill 1755 (Assembly Member Kalra and Senator Umberg; Ch. 938. Stats. 2024) - Civil actions: restitution for or replacement of a new motor vehicle.
 - (2) Assembly Bill 1777 (Assembly Member Ting; Ch. 682. States. 2024) - Autonomous vehicles.
 - (3) Assembly Bill 1849 (Assembly Member Grayson; Ch. 196, Stats. 2024) - Song-Beverly Consumer Warranty Act: services and repairs: travel trailers and motor homes.
- c. Pending Federal Legislation of General Interest: None

The members were provided with a memo from Tim Corcoran and Jason Rose

concerning enacted legislation. Mr. Rose reported that although there is no legislation of special interest or new laws that directly impact the Board, there were a couple of bills of general interest passed.

First, Assembly Bill 1575 significantly alters the Lemon Law process in California and adopts a new prelitigation procedure. Mr. Rose stated the bill was passed quickly so the Governor indicated when passing it that he's anticipating additional legislation allowing automakers to elect whether to participate in these new procedures.

Next Mr. Rose discussed Assembly Bill 1777, an autonomous vehicle bill, that allows citations to the manufacturer or operator of the vehicle if there is no driver. If there is a driver, then the driver would be cited.

Lastly, Assembly Bill 1849 was discussed. Mr. Rose stated that the bill provides consumers of RV's, travel trailers, and motorhomes with enhanced consumer protections like the Lemon Law. Consumers can elect reimbursement or replacement.

There was no Board action as this matter was for information only.

18. **DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY AMENDMENTS TO THE BOARD'S CONFLICT OF INTEREST CODE IN SECTION 599 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS - POLICY AND PROCEDURE COMMITTEE**

The members were provided with a memorandum from Tim Corcoran and Robin Parker concerning a proposed amendment to Section 599 of Title 13 of the California Code of Regulations pertaining to the Board's Conflict of Interest Code. Ms. Parker indicated that "Appendix A – Designated Positions" needs to be updated to reflect Kim Vaye's position as Assistant Division Chief/Program Manager.

Member Stevens moved to adopt the proposed regulation. Member Schmidt seconded the motion. The motion carried unanimously.

19. **EXECUTIVE DIRECTOR'S REPORT**

- A. Administrative Matters.
- B. Case Management.
- C. Judicial Review.
- D. Notice Filed Pursuant to Vehicle Code sections 3060/3070 and 3062/3072.
- E. Other.

Mr. Corcoran provided the members with a report on Administrative Matters that identified all pending projects, the Board staff and committee assigned, estimated completion dates, and status.

Mr. Corcoran highlighted the progress made on the Board's 2024-30 Strategic Plan objectives. Ms. Vaye created a production document displaying not only the plan itself, but also containing messages from President Kassakhian, Mr. Corcoran, and Ms. Vaye, as the Board's Equity Officer.

Additionally, Mr. Corcoran indicated that Board staff volunteered to take significant roles in implementing several of the objectives from the Strategic Plan. Timeframes have been developed and updates will be provided at future meetings.

Regarding the Board's work supporting motor vehicle recall awareness, Mr. Corcoran stated Ms. Vaye worked with the partners of the California State Transportation Agency (CalSTA) organization to share the "Check to Protect" message via social media, their website, and potentially the monitors in 170 DMV field offices. A productive meeting was held with Caltrans' Director Tavares looking into putting the "Check to Protect" banners or signage at 400 maintenance stations throughout California.

Mr. Corcoran stated that initiatives related to recognition of local jurisdictions and other entities who have taken meaningful steps to make their communities ZEV-ready, and a separate effort to encourage responsible sales practices, to dispel myths, educate, and prepare Californians for ZEV adoption will be framed out by the end of 2024.

Lastly, Mr. Corcoran informed the members that Board staff will soon start working with President Kassakhian and Vice President Stevens in their roles as members of the Ad Hoc Committee to Review the Mission and Vision Statements.

Ms. Parker indicated that in the *Putnam Ford* warranty case (Protest No. PR-2826-23), the request for post-hearing deposition designations is being considered next week and the hearing opened to add additional exhibits. She anticipates the proposed decision being heard at the March 26, 2025, Special Meeting. In *Serramonte Ford* (Protest No. PR-2855-24), all three parties including the Intervenor agreed to allow Ms. Parker to preside over the settlement conference in light of ALJ Wong's passing.

Mr. Rose reported that that since the members received the Executive Director's report, one protest was dismissed and in another matter a hearing on a motion to dismiss was scheduled for November 22, 2024.

20. **SELECTION OF BOARD MEETING DATES FOR 2025**

The Board Members selected the following Board meeting dates for 2025:

- February 28, 2025, General Meeting (Fresno)
- March 26, 2025, Special Meeting (Sacramento)
- March 27, 2025 Industry Roundtable (Sacramento)

- August 1, 2025, General Meeting (Glendale)
- December 12, 2025, General Meeting (San Diego)

21. **CLOSED EXECUTIVE SESSION**

Pursuant to Government Code section 11126(a)(1), all members of the Board shall convene in a closed Executive Session.

CONSIDERATION OF ANNUAL PERFORMANCE REVIEW FOR EXECUTIVE DIRECTOR - EXECUTIVE COMMITTEE

Consideration of annual performance review for Executive Director, by all members of the Board.

The Public and Dealer Members convened in Closed Executive Session to discuss Agenda Item No. 21.

22. **OPEN SESSION**

The Board Members returned to Open Session. President Kassakhian announced there was no Board action taken in regard to Agenda Item 21.

23. **PUBLIC COMMENT** (Gov. Code § 11125.7)

No additional public comment was presented.

24. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned the memory of the late Judge Marilyn Wong at 2:12 p.m.

Submitted by

TIMOTHY M. CORCORAN
Executive Director

APPROVED: _____
Ardashes ("Ardy") Kassakhian
President
New Motor Vehicle Board

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STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

MINUTES

The Ad Hoc Committee on Equity, Justice and Inclusion held a meeting on November 1, 2024, at Glendale City Hall, Council Chamber Room, 613 E. Broadway, 2nd Floor, Glendale, California 91206.

Kathryn Doi, Chair and Public Member called the meeting to order at 2:14 p.m.

2. ROLL CALL AND ESTABLISHMENT OF QUORUM

Ad Hoc Committee on Equity, Justice and Inclusion Members Present:

Kathryn Ellen Doi, Chair
Jake Stevens, Vice Chair
Anne Smith Boland, Member
Ashley Dena, Member
Ardy Kassakhian, Member
Bismarck Obando, Member

New Motor Vehicle Board ("Board") Staff Present:

Timothy M. Corcoran, Executive Director
Kim Vaye, Assistant Director and Equity Officer
Robin P. Parker, Chief Counsel
Jason Rose, Senior Staff Counsel

Tammy Bayne, Administrative Law Judge

Ms. Vaye indicated that a quorum was established. At the November 1, 2024, General Meeting held just prior to this meeting, President Kassakhian made the Ad Hoc Committee a standing committee. Additionally, the new Committee on Equity, Justice and Inclusion includes all Board Members.

Chair Doi welcomed the Committee Members, staff and the public.

3. **DISCUSSION AND CONSIDERATION OF A DRAFT REVISED MISSION STATEMENT**

The members were provided with the Ad Hoc Committee's current Mission as noted:

Mission Statement as of August 7, 2021

The purpose of the California New Motor Vehicle Board's Ad Hoc Committee on Equity, Justice and Inclusion will be to engage with the new motor vehicle industry and its stakeholders in a call to action to reverse policies and practices that have resulted in bias, both conscious and unconscious. Further, the New Motor Vehicle Board, as a department within the California State Transportation Agency (CalSTA), will educate, inform, and develop feedback to CalSTA on equity issues, including but not limited to, the following: 1) the role of new motor vehicle franchisors to provide women, minorities, and other members of historically excluded groups access to flooring and ownership of their own franchised dealers; and 2) explore opportunities for women, minorities, and other members of historically excluded groups to be considered for exempt executive level positions within CalSTA and its departments.

Ms. Vaye proposed the revised mission as follows:

Revised Mission Statement

Foster a culture that embraces equity, celebrates diversity, champions inclusion and belonging, and prioritizes accessibility and justice to remove barriers, promote fair treatment, and catalyze action to create and drive meaningful change for all stakeholders in the new motor vehicle industry.

Member Obando moved to adopt the revised Mission Statement. Member Dena seconded the motion. The motion carried unanimously.

4. **DISCUSSION AND CONSIDERATION OF DRAFT COMMITTEE CHARTER**

The members were provided with a draft Committee Charter. The draft Chart encompassed the Committee's Mission, background, purpose, goals, deliverables, meetings, roles and responsibilities, and amendments and addendums.

Member Stevens moved to adopt the draft Committee Charter. Member Obando seconded the motion. The motion carried unanimously.

5. **DISCUSSION AND CONSIDERATION OF DRAFT EQUITY LENS ASSESSMENT RUBRIC THE COMMITTEE WILL UTILIZE WHEN REVIEWING BOARD PROPOSED NEW AND AMENDED POLICIES**

The members were provided with a draft Equity Lens Assessment Rubric the Committee will utilize when reviewing proposed new and amended Board policies.

As indicated in the rubric, the Board commits to using a systematic application of an Equity Lens Assessment Rubric when developing new policies and reviewing existing ones. In doing so, the Board will:

- Infuse equity in evaluation of NMVB policies, processes, and programs.
- Identify potential disparate effects on underserved and marginalized individuals, groups, and communities, and minimize unintended adverse consequences.
- Reduce or eliminate barriers.
- Make decisions that result in more equitable outcomes across policies, programs, practices, and processes.

After a brief discussion, Member Smith Boland moved to adopt the draft Equity Lens Assessment Rubric. Member Stevens seconded the motion. The motion carried unanimously.

6. **PRIOR REVIEW OF PROPOSED REVISIONS TO THE BOARD POLICY CONCERNING THE ASSIGNMENT ADMINISTRATIVE LAW JUDGES TO MERITS HEARINGS TO EXCLUSIVELY USE THE OFFICE OF ADMINISTRATIVE HEARINGS FOR ALL MERITS HEARINGS**

The members were provided with a memo from Tim Corcoran and Robin Parker concerning proposed revisions to the assignment of cases to exclusively use the Office of Administrative Hearings or OAH for all merits hearings. Ms. Parker provided the background leading to this proposed revision.

The members reviewed the proposed policy using the Equity Lens Assessment Rubric discussed above. The proposed revisions to the Board policy were approved for full Board review but the Committee requested information concerning whether OAH judges receive unconscious bias training. After the meeting, Ms. Vaye confirmed that training was offered in March 2022 for Implicit Bias Awareness and Mitigation Diversity, Equity, and Inclusion and Implicit Bias in the Courts as part of their mandatory Annual ALJ Conference centered around continuing education.

7. **DISCUSSION AND CONSIDERATION OF DRAFT EQUITY GLOSSARY OF TERMS**

The members were provided with a draft equity glossary of terms.

Chair Doi suggested the glossary be dated in a footer and the offensive words and phrases be alphabetized. Member Stevens moved to adopt the draft equity glossary of terms with Chair Doi's suggestions. Member Smith Boland seconded the motion. The motion carried unanimously.

8. **DISCUSSION OF NO-COST DIVERSITY, EQUITY, INCLUSION, JUSTICE, AND ACCESSIBILITY TRAINING AND DEVELOPMENT OPPORTUNITIES FOR STAFF AND BOARD MEMBERS**

Ms. Vaye discussed no-cost diversity, equity, inclusion, justice, and accessibility training

and development opportunities for staff and Board members. She informed Board members that she would be sending them Land Acknowledgment educational materials and emphasized the importance of “learning without being taught.”

9. **PUBLIC COMMENT** (Gov. Code § 11125.7)

No additional public comment was presented.

10. **ADJOURNMENT**

With no further business to discuss, the meeting was adjourned at approximately 3:09 p.m.

Submitted by

KIMBERLEE VAYE
Assistant Director and Equity Officer

APPROVED: _____
Kathryn Ellen Doi, Chair
Ad Hoc Committee on Equity, Justice and Inclusion
New Motor Vehicle Board



Memorandum

Date : FEBRUARY 13, 2025

To : NEW MOTOR VEHICLE BOARD

**From : ARDASHES “ARDY” KASSAKHIAN
PRESIDENT**

Subject : COMMITTEE ASSIGNMENTS

At the February 28, 2025, General Meeting, we are going to review committee assignments.

The current committee assignments are as follows:

ADMINISTRATION COMMITTEE

Bismarck Obando, Chair

Anne Smith Boland, Member

BOARD DEVELOPMENT COMMITTEE

Kathryn Ellen Doi, Chair

Brady Schmidt, Member

COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Kathryn Ellen Doi, Chair

Jake Stevens, Vice Chair

Anne Smith Boland, Member

Ashley Dena, Member

Ardy Kassakhian, Member

Bismarck Obando, Member

Brady Schmidt, Member

EXECUTIVE COMMITTEE

Ardy Kassakhian, President

Jake Stevens, Vice President

FISCAL COMMITTEE

Bismarck Obando, Chair

Ashley Dena, Member

GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE

Anne Smith Boland, Chair

Ashley Dena, Member

LEGISLATIVE COMMITTEE

Ardy Kassakhian, President

Jake Stevens, Vice President

POLICY AND PROCEDURE COMMITTEE

Jake Stevens, Chair

Kathryn Ellen Doi, Member

AD HOC COMMITTEE TO REVIEW THE MISSION AND VISION STATEMENTS

Ardy Kassakhian, President

Jake Stevens, Vice President

The description of the standing committees are as follows:

- **Administration Committee** - personnel, hiring, internal operations (as they relate to administration), office forms (including letterhead) and the Board's website.
- **Board Development Committee** - Board Member education, welcoming new Board Members, meeting with the CNCDA (all Board members, as their schedules allow, may volunteer for this activity) and the employee recognition program.
- **Committee on Equity, Justice and Inclusion** - Dedicated to fostering a culture that embraces equity, celebrates diversity, champions inclusion and belonging, and prioritizes accessibility and justice to remove barriers, promote fair treatment, and catalyze action to create and drive meaningful change for all stakeholders in the new motor vehicle industry.
- **Executive Committee** – comprised of the Board President and Vice President includes approval of Board meeting Agendas, meeting with Department and Agency Directors, monitoring the Business, Transportation & Housing Agency audit of Board activities, and other matters requiring Board representation.
- **Fiscal Committee** - budget and finance matters related to Board operation.
- **Government and Industry Affairs Committee** - expanding efforts related to government and industry outreach, including the Industry Roundtable. Review industry related advertising laws. Develop a Core Four - Safety initiative (OKR) related to improving the repair rate of California-registered vehicles subject to the Takata air bag inflator “stop drive” safety recall.
- **Legislative Committee** - comprised of the Board President and Vice President unless otherwise designated by the President. Provides analyses on legislation that directly affects the Board's laws and functions.
- **Policy and Procedure Committee** - regulations, Board protocol (including parliamentary procedures and meeting minutes), legal action participation, case management and internal operations (as they relate to policy and procedure).

If you have any questions, please do not hesitate to contact me or Tim Corcoran at (916) 244-6774.



Memorandum

Date : FEBRUARY 3, 2025

To : PRESIDENT KASSAKHIAN

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : APPOINTMENT OF BOARD MEMBER DESIGNEE IN COMPLIANCE WITH
THE BOARD'S 1997 "REVISED BOARD POLICY REGARDING
REPRESENTATION IN COURT ACTIONS," BY THE INCOMING BOARD
PRESIDENT**

In response to the 1996 Performance Audit conducted by Business, Transportation & Housing Agency, the former Judicial Policies and Procedures Committee (members Livingston and Skobin) developed the initial policy regarding representation in court actions that was adopted by the Board at its October 22, 1996, General Meeting. One aspect of the initial policy concerning the Office of the Attorney General filing a "perfunctory answer with the court" was problematic as the Attorney General's Office was reluctant to make any appearance on the Board's behalf without thoroughly reviewing the underlying action. At its February 12, 1997, General Meeting, the Board adopted the attached "Revised Board Policy Regarding Representation in Court Actions" (hereinafter collectively referred to as "Policy").

According to the Policy, the Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. The Policy specifically provides that:

When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important state interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding (the petitioner and the real party in interest) of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. (See attached Revised Policy, paragraph 2).

However, in mandamus actions in which an important state issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the state interest ... In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled

meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff, and the matter would be scheduled for discussion at either the next general meeting of the Board or, if three public members request, then at a special meeting of the Board . . . Any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's own counsel . . . (See attached Policy, paragraph 4, pages 2-3).

The above policy was modified in 2008 to provide that when a Dealer Member is President, only those matters in which a Dealer Member would be disqualified from having heard in the first place are delegated. Furthermore, if you have a Dealer Member as Board President, and a Public Member as Vice President, then the designation should automatically go to the Vice President.

The designation of a Board Member by the Board President consistent with this Policy is being agendaized for the February 28, 2025, General Meeting.

If you have any questions or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

Attachments



MEMO

To : ALL BOARD MEMBERS

Date: January 29, 1997

From : NEW MOTOR VEHICLE BOARD
Judicial Policies and Procedures Committee
(Committee members: Dan Livingston and Alan Skobin)
(916) 445-2080

Subject: **REVISED BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS**

At its General Meeting of October 22, 1996, the members of the Board adopted a policy regarding legal representation of the Board and Board appearances in court proceedings. A copy of the memorandum which sets forth the Board's policy in this regard is attached hereto.

Since the time that the Board's policy has been adopted and implemented, it has been determined that one aspect of this policy has not worked in the manner that we had hoped. Specifically, the policy requires that, in mandamus actions in which an important state issue is not raised, the office of the Attorney General would file a perfunctory answer with the court, and advise the court of the Board's policy not to file a memorandum of points and authorities in opposition to the petition or to present oral arguments on the issues raised. The problem that has arisen is the Attorney General's understandable reluctance to make any appearance on the Board's behalf without thoroughly reviewing the pleadings and Board decision in the underlying action to determine if any significant policy or legal issues are raised by the mandamus action. Accordingly, it is recommended that the Board's policy in this regard be revised as follows. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important state interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding (the petitioner and real party in interest) of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. In all other respects, the policy regarding legal representation of the Board and Board appearances in court proceedings, as set forth in the attached memorandum, would remain unchanged.

This matter will be discussed at the General Meeting of the Board scheduled for February 12, 1997. Your interest in this matter is greatly appreciated.



MEMO

To : ALL BOARD MEMBERS

Date: October 17, 1996

From : NEW MOTOR VEHICLE BOARD
Judicial Policies and Procedures Committee
(Committee members: Dan Livingston and Alan Skobin)
(916) 445-2080

Subject: BOARD POLICY REGARDING REPRESENTATION IN COURT ACTIONS

This memorandum is in reference to the agenda item discussed at the last Board meeting, specifically the legal representation of the Board in court proceedings. The relevant issues involve the question as to when and to what extent the Board should participate in mandamus actions in which a Board decision is challenged, as well as whether Board staff or the Office of the Attorney General should represent the Board in those actions in which the Board participates¹. The members of the Board referred this matter to the Board's Judicial Policies and Procedures Committee (the "Committee") for further evaluation and recommendation back to the full Board for consideration. The Committee has thoroughly reviewed the law and policies regarding these issues, and the following recommendations are a result of this analysis.

Government Code sections 11042 and 11043 require that all state agencies utilize the services of the Office of the Attorney General in all legal matters in which the agency is involved. Government Code section 11040 provides that the agency may employ independent legal counsel only after having obtained the written consent of the Attorney General. Section 11041 enumerates several agencies which are exempt from these requirements. The Board is not contained in the list of exempted agencies.

The Committee has reviewed and discussed the circumstances relating to mandamus actions in which the Board may be involved. There are often two distinct phases to the proceedings. In the first phase, the party challenging the decision would seek a court order staying the effect of the Board decision. This would either be done ex parte (with as little as 4 hours notice to the Board), or by noticed motion giving the Board 10 to 15 days notice. In the past, staff of the Board has appeared at the ex parte matters because of the difficulty with getting a Deputy Attorney General assigned to the matter and/or knowledgeable about the case with such short notice. However, as a result of the state of the law

¹ Pursuant to Vehicle Code sections 3058 and 3068, as well as Code of Civil Procedure section 1094.5, any party to a final decision of the Board may challenge the Board decision by filing a petition for writ of administrative mandamus in the superior court.

regarding the Office of the Attorney General discussed above, it is the Committee's position that, in all future ex parte matters, that staff contact the Attorney General's office to apprise them of the pendency of the ex parte proceedings but to take no further action in representing the Board before the court without the consent of the Attorney General.

The second phase of the proceedings would be the briefing and hearing on the merits of the mandamus actions, ie. whether the Board's decision was supported by substantial evidence and whether the Board's actions were proper procedurally. In the past, the Attorney General's office has represented the Board in these matters, and the Board's staff has provided assistance by way of research and drafting of pleadings, as well support in court. The Committee has reviewed this practice and recommends that it be retained in all future cases, subject to the limitations below.

The second issue which was reviewed by the Committee pertains to when, and to what extent, the Board should participate in mandamus actions challenging a Board decision. An analogy was drawn between the Board and a civil action initiated and tried in the superior court. When the superior court renders a judgment in a civil action and a party files a petition for an extraordinary writ with the Court of Appeal, the superior court is named as the responding party, much the same as in those actions challenging a Board decision. The court, however, does not make an appearance in the writ proceeding before the Court of Appeal, but instead allows the real party in interest to present the relevant arguments to the appellate court supporting the actions taken by the superior court. The Committee has determined that this practice should be utilized by the Board and, as a result, recommends the following policy.

The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. There are a number of sound reasons for such a policy. In most of the mandamus actions in which the Board is named as a respondent, the interests of both parties are adequately represented by their respective counsel. In addition, the appearance by the Board in such cases would lead to an unnecessary expenditure of state resources. Instead, the Attorney General (or Board attorneys, if permission is given by the Attorney General), should be requested to file only a perfunctory answer to the Petition for Writ of Administrative Mandamus, advising the court of the Board policy and that it is not appropriate for the Board to file a memorandum or points and authorities in opposition to the petition or to present oral arguments on the issues raised.

However, in mandamus actions in which an important state issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the state interest. Examples of important state issues could include challenges to the jurisdiction of the Board, a decision which could affect future Board cases, unusual issues concerning the standard of review in the mandamus action, as well as serious matters of public safety. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board Member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff, and the matter would be scheduled for discussion at either the next general

meeting of the Board or, if three public members request, then at a special meeting of the Board. The same policy would apply to ex parte hearings for a stay of the Board's order, as well as law and motion proceedings in which a stay order is sought. In any event, any appearance by the Board would be made by the office of the Attorney General or, with the consent of the Attorney General, by the Board's own counsel.

The Committee has considered the various aspects regarding these issues, and believes that the policies, as set forth above, will ensure that the interests of the State and Board are adequately represented when appropriate.



New Motor Vehicle Board RESOLUTION

W*HEREAS* Karthick Ramakrishnan was appointed to the Board in June 2023, by then Speaker of the Assembly Anthony Rendon, to serve as a public member of the **NEW MOTOR VEHICLE BOARD**; and,

W*HEREAS* Mr. Ramakrishnan actively engaged in the Board's business by providing sound advice and leadership on the Board's 50th Anniversary logo, was thoughtful, friendly and outgoing to staff and fellow members; and,

W*HEREAS* the foremost concern of Mr. Ramakrishnan is public service to the people of the State of California, being active in political and community affairs, with exemplary service and dedication in the best interest of his fellow citizens, which merits the highest praise and recognition; and,

W*HEREAS* Mr. Ramakrishnan has given with great unselfishness and dedication of his time and expertise to matters concerning the motor vehicle industry and helped direct and protect the welfare of the automotive industry in this State, which is vital to California's economy and public welfare, thereby enhancing the respect of the auto industry and public for the Board; and,

T*HEREFORE, BE IT RESOLVED* that every member of the **NEW MOTOR VEHICLE BOARD** joins in expressing their profound appreciation to Mr. Ramakrishnan for his contribution to the Board, to the motor vehicle industry and to the people of the State of California.

Dated this 28th day of February 2025

ARDASHES "ARDY" KASSAKHIAN, PRESIDENT

JACOB STEVENS, VICE PRESIDENT

ANNE SMITH BOLAND, MEMBER

ASHLEY DENA, MEMBER

KATHRYN ELLEN DOI, MEMBER

BISMARCK OBANDO, MEMBER

BRADY SCHMIDT, MEMBER



New Motor Vehicle Board RESOLUTION

W*HEREAS* Merilyn Wong proudly served as a Hearing Office and Administrative Law Judge for the **NEW MOTOR VEHICLE BOARD** for over 40 years having started her career in January 1982; and,

W*HEREAS* Judge Wong presided over hearings and Mandatory Settlement Conferences with the utmost skill, professionalism, and legal knowledge. She was conscientious, fair, and caring, and a respected public servant to the people of California; and,

W*HEREAS* Judge Wong served as the Board's designated Mandatory Settlement Conference Administrative Law Judge where she excelled at resolving disputes because of her calm demeanor, ability to fully listen, and thoughtful understanding of the issues. She maintained her objectivity, expressed her passion for the value of the Board, and relied on her self-proclaimed "secret sauce." Judge Wong earned a reputation as an extraordinarily effective settlement judge; and,

W*HEREAS* Judge Wong mentored and trained her fellow judges and staff, was friendly, and always accessible to Board staff, and the parties and counsel that appeared before her; and,

W*HEREAS* Judge Wong generously devoted her time, expertise, experience, and dedication toward the successful operation of the Board in matters concerning the motor vehicle industry, and helped advance and protect the integrity of the automotive industry in this State, which is vital to California's economy and the public welfare, thereby enhancing the respect of the auto industry and public for the Board; and,

T*HEREFORE, BE IT RESOLVED* that every member of the **NEW MOTOR VEHICLE BOARD** joins in expressing their profound appreciation to Judge Wong's family for her contribution to the Board, to the motor vehicle industry, and to the people of the State of California.

Dated this 28th day of February 2025

ARDASHES "ARDY" KASSAKHIAN, PRESIDENT

JACOB STEVENS, VICE PRESIDENT

ANNE SMITH BOLAND, MEMBER

ASHLEY DENA, MEMBER

KATHRYN ELLEN DOI, MEMBER

BISMARCK OBANDO, MEMBER

BRADY SCHMIDT, MEMBER



Memorandum

Date : FEBRUARY 7, 2025

**To : ADMINISTRATION COMMITTEE
BISMARCK OBANDO, CHAIR
ANNE SMITH BOLAND, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

Subject : CONSIDERATION OF THE REVISED *GUIDE TO THE NEW MOTOR VEHICLE BOARD* TO INCLUDE INFORMATION ON STATUTORY AND REGULATORY CHANGES

The *Guide to the New Motor Vehicle Board* was most recently approved at the April 25, 2024, General Meeting. Each year it is thoroughly reviewed and updated. The New Motor Vehicle Board ("Board") composition and staff updates are reflected in the attached Guide. The table of contents and all page references were updated. The section entitled "New as of 2025" was updated to reflect there were no changes to legislation, case law, and regulations impacting the Board.

The following additional edits are highlighted yellow in underline and strikeout font:

- All references to paying filing fees by credit card have been deleted. In the absence of a vendor contract, credit card payments cannot be accepted.
- Gender specific language was replaced with gender neutral language in the Amicus Curiae Briefs section on pages 11 and 76.
- The word "petitioner" replaced "protestant" in the Petitioner Filing Fees section on page 73.

This matter is being agendized for discussion and consideration at the February 28, 2025, General Meeting.

If you have any question or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



State of California

NEW MOTOR VEHICLE BOARD

***Guide to the
New Motor Vehicle Board***

February 2025

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

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California State Transportation Agency
TOKS OMISHAKIN, SECRETARY

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Public Members
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ARDASHES (ARDY) KASSAKHIAN
BISMARCK OBANDO
JACOB STEVENS

Dealer Members
ANNE SMITH BOLAND
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BRADY SCHMIDT

EXECUTIVE STAFF

TIMOTHY M. CORCORAN
Executive Director
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Assistant Director and Equity Officer

LEGAL STAFF

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Chief Counsel
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PREAMBLE

This publication provides general information only as to the most pertinent Vehicle Code sections as they relate to practice before the New Motor Vehicle Board ("Board"). There are many other important Vehicle Code sections and Department of Motor Vehicles ("Department") regulations not covered in this publication. The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation. Practitioners as well as the general public are invited to comment on the forms and contents of procedures. The Board only has one office in Sacramento. All correspondence, protests, and petitions should be sent to:

New Motor Vehicle Board
ATTN: Legal Department
2415 1st Avenue, MS L242
Sacramento, California 95818

Correspondence can also be sent via email at nmvp@nmvp.ca.gov. The telephone number of the Board is (916) 445-1888 and the website address is www.nmvp.ca.gov. Detailed information can be found on the Board's website. Please feel free to contact the Board's staff for further information.

PREFACE

The purpose of this publication is to familiarize the reader with the organization and jurisdiction of the Board, including the Board's operations and procedures. All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available at <http://leginfo.legislature.ca.gov/faces/codes.xhtml> or on the Board's website. References to regulations are to Title 13 of the California Code of Regulations ("CCR").¹ The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's ("OAL") website (www.oal.ca.gov). Once you reach the OAL site, select California Code of Regulations. You will be taken to the California Code of Regulations and can search by title; the Board's regulations are in Title 13. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code §§ 11400 through 11529) are applicable. Citations to relevant court decisions are interspersed throughout. The provisions of the APA are available at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

The Board also publishes the *Informational Guide for Manufacturers and Distributors* to assist manufacturers and distributors in clarifying California's vehicle franchise laws. It is designed for personnel in manufacturer or distributor market representation departments, dealer development departments, or legal departments. The *Informational Guide for Manufacturers and Distributors* is available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website at www.nmvb.ca.gov.

¹ The Board's regulations, Sections 550 through 598, are under Title 13 (Motor Vehicles), Division 1 (Department of Motor Vehicles), Chapter 2 (New Motor Vehicle Board) of the California Code of Regulations. There are separate and different regulation provisions for petitions (Articles 2 and 4) and protests (Article 5).

INTRODUCTION

Purpose

The Board is a program within the Department. The Board was originally created in 1967 as the New Car Dealers Policy and Appeals Board. At that time, the Board's only function was hearing appeals¹ from final decisions of the Director of the Department adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative.² In 1973, the Legislature passed the California Automobile Franchise Act (Stats. 1973, Ch. 966, § 1, p. 2), which gave the Board its present name and created a broad statutory framework and a forum for regulating and settling disputes in the new vehicle industry. The constitutionality of this regulatory scheme has survived a due process challenge in the United States Supreme Court (*New Motor Vehicle Board v. Orrin W. Fox Co.* (1978) 439 U.S. 96).

Organization

The organization of the Board is prescribed in Vehicle Code sections 3000 to 3016. The Board is comprised of nine members. The chart below identifies the composition of the Board.

Who	Qualifications	Appointment
Four licensed new motor vehicle dealers. (Dealers that deal exclusively in motorcycles, ATVs, or recreational vehicles are excluded from membership on the Board.)	Must have been licensed as a new motor vehicle dealer for not less than five years.	All by the Governor.
Five members from the general public.	One must be an attorney who has been a member of the California Bar for at least 10 years.	Three by the Governor. One by the Senate Rules Committee. One by the Speaker of the Assembly.

¹ Effective January 1, 2020, the Board's jurisdiction to hear appeals was repealed. (Assembly Bill 179, Ch. 796)

² Throughout this Guide, the terms dealer, protestant, and franchisee are used interchangeably, as are the terms manufacturer/distributor, respondent, and franchisor.

Meetings

The Board meets at least twice during each calendar year, with supplemental meetings held as necessary. Board meetings are open to the public with the exception of executive sessions, which are held to deliberate on pending matters before the Board. As public meetings conducted by a state entity, the Bagley-Keene Open Meeting Act (Gov. Code §§ 11120 through 11132) covers all requirements for public notice, agendas, public testimony and the conduct of Board meetings. To the extent practicable, the Board conducts business at meetings using procedures set forth in *Robert's Rules of Order*.

Jurisdiction

The Board's statutory jurisdiction under Vehicle Code section 3050(b) extends over any person applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative. In the past, the courts construed this jurisdiction as primary and exclusive, meaning an aggrieved licensee must bring any dispute arising out of the franchise relationship before the Board prior to seeking judicial relief (*Yamaha Motor Company v. Superior Court* (1986) 185 Cal.App.3d 1232; *Yamaha Motor Company v. Superior Court* (1987) 195 Cal.App.3d 652; *Ray Fladeboe Lincoln-Mercury, Inc. v. New Motor Vehicle Board* (1992) 10 Cal.App.4th 51; *Mathew Zaheri Corp. v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal.App.4th 288.) However, subsequent court decisions have held otherwise (*Miller v. Superior Court* (1996) 50 Cal.App.4th 1665; *Hardin Oldsmobile v. New Motor Vehicle Board* (1997) 52 Cal.App.4th 585; *Tovas v. American Honda Motor Company, Inc.* (1997) 57 Cal.App.4th 506; *Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 Cal.App.4th 1527.) As a consequence of these judicial decisions, subdivision (e) of Vehicle Code section 3050 was added by the Legislature in 1997 and became effective in 1998. It provides that the courts have jurisdiction over all common law and statutory claims originally cognizable in the courts. For those claims, a party may initiate an action directly in any court of competent jurisdiction.

In 2003, the Board's petition jurisdiction was further narrowed by the Third District Court of Appeal in *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4th 1451. The court held that the Board's jurisdiction for licensee versus licensee petitions is limited to those in which the petitioner seeks relief under Vehicle Code section 3050, subdivision (c)(1) or (3) [Effective January 1, 2020, this relief is now in subdivision (b)(1) and (b)(3)]. Subdivision (c)(1) allows the Board to direct the Department to conduct an investigation of matters that the Board deems reasonable. Subdivision (c)(3) permits the Board to order 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 occupational license of a manufacturer or distributor. The Board's jurisdiction under Vehicle Code section 3050, subdivision (c)(2) [Effective January 1, 2020, this relief is now in subdivision (b)(2)], which provides that the Board may "undertake to mediate, arbitrate, or otherwise resolve any honest difference of opinion or viewpoint [i.e., hold a hearing] existing between any member of the public and any new motor vehicle dealer, manufacturer, ... distributor ...", is now limited to petitions brought by members of the public, and does not include licensees as petitioners.

Effective January 1, 2004, the Vehicle Code was amended to bring new recreational vehicles (“RVs”) as defined in Health and Safety Code section 18010(a) under the jurisdiction of the Board for purposes of dispute resolution and fee collection (Senate Bill 248, Stats. 2003, Ch. 703 § 11). This Guide integrates current Board processes and procedures to the extent they can be used to resolve disputes in the RV segment of the new motor vehicle industry and sets forth unique procedures that pertain to RV issues exclusively.

Effective January 1, 2020, the Board’s jurisdiction over appeals was repealed.

NEW AS OF 2025

Legislation

There were no legislative changes impacting the Board's jurisdiction.

Case Law

There were no new opinions impacting the Board's jurisdiction that were final in 2024.

Regulations

There were no new or amended regulations that impact the Board's jurisdiction.

POWERS AND DUTIES IN GENERAL

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. New motor vehicle dealers, manufacturers, and distributors under the jurisdiction of the Board are charged fees to fund the Board's activities. (Veh. Code § 3016; 13 CCR § 553) In addition to delegating rulemaking authority to the Board, Vehicle Code section 3050 empowers the Board to resolve disputes arising in the form of protest or petitions.

As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

Enforcement of Board Orders

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board's authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts. (Veh. Code § 3050.2(a)) Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or petition or suspend the proceedings pending compliance. Vehicle Code section 11726 provides for enforcement of Board orders by permitting any licensee to recover damages, attorney fees, and injunctive relief in any court of competent jurisdiction for a willful failure to comply with a Board order.

Mandatory Settlement Conferences

In any protest or petition filed with the Board, the Board, its Executive Director, or an Administrative Law Judge ("ALJ") may order a mandatory settlement conference. (Veh. Code § 3050.4) For any proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties. (13 CCR § 551.11) The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party. (Veh. Code § 3050.4)

DISPUTES BETWEEN THE DEALER AND THE FRANCHISOR

The Vehicle Code gives the Board jurisdiction to resolve disputes involving the following:

Type of Case	Vehicle Code Authority	Page Nos.
Attempts by the franchisor to terminate, modify, or refuse to continue (renew) the franchise.	3060, 3070	13-21
Attempts by the franchisor to establish a new, or relocate an existing, dealer (of the “same line-make”) if the current franchisee is within a radius of 10 air miles of the proposed location (called the “relevant market area”).	3062(a)(1), 3072(a)(1)	22-26
Attempts by the franchisor to establish a satellite warranty facility at, or relocate an existing satellite warranty facility to, a location that is within 2 miles of any dealership of the same line-make. (<u>Note</u> : there are no comparable provisions for RV dealers.)	3062(a)(2)	27-30
Disputes relating to the dealers’ delivery and preparation obligations, and compensation for such services.	3064, 3074	31-32
Disputes relating to reimbursement for warranty work performed by motor vehicle dealers.	3065	33-39
Disputes relating to a franchisee’s retail labor rate or retail parts rate. (<u>Note</u> : there are no comparable provisions for RV dealers.)	3065.4	40-49
Disputes relating to reimbursement for warranty work performed by RV dealers.	3075	50-52
Disputes relating to reimbursement for franchisor incentive programs by motor vehicle dealers.	3065.1	53-58
Disputes relating to reimbursement for franchisor incentive programs by RV dealers.	3076	59-60
Disputes relating to a franchisor’s performance standard, sales objective, or program for measuring a dealer’s sales, service, or customer service performance. (<u>Note</u> : there are no comparable provisions for RV dealers.)	3065.3(a)	61-64
Disputes relating to a franchisor’s allocation of vehicles or parts. (<u>Note</u> : there are no comparable provisions for RV dealers.)	3065.3(b)	61-64
Disputes relating to a franchisor’s imposition of a facility or equipment policy. (<u>Note</u> : there are no comparable provisions for RV dealers.)	3065.3(c)	61-64
Disputes relating to a franchisor competing with a dealer. (<u>Note</u> : there are no comparable provisions for RV dealers.)	3065.3(d)	65-66

Type of Case	Vehicle Code Authority	Page Nos.
All other disputes concerning the activities or practices of any person applying for or holding a license as a new motor vehicle dealer, manufacturer, or distributor submitted by any member of the public ³ or disputes between a franchisor and a franchisee seeking an investigation or a licensing action by the Department.	3050(b)	72-77

NOTE: Vehicle Code section 3050(c) prohibits a dealer member from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed “pursuant to Article 4 (commencing with Section 3060), unless all parties to the protest stipulate otherwise.”

Vehicle Code section 3066(f) states: “[a] member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article [Article 4, i.e., protests involving motor vehicles other than RVs] unless all parties to the protest stipulate otherwise.” These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions.

The dealer members may participate in those matters not involving a dispute between a franchisee and franchisor such as a petition filed by a member of the public. For matters before the Board in which relief is sought pursuant to Vehicle Code section 3050(b), dealer members may not participate and there are no provisions to allow parties to stipulate and permit participation.

In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless the dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

³ Members of the public have the option to seek informal mediation of their disputes (13 CCR § 551.14, et seq.) as well as administrative hearings on the merits pursuant to the Board’s petition process.

PROTESTS IN GENERAL

Statutory Authority

Vehicle Code section 3050(c) provides for the Board to hear and decide any protest presented by a franchisee against a franchisor.

Statutory Bases for Protest

A protest can arise as a result of disputes contemplated by the following statutory provisions:

Vehicle Code Section	Provision
3060, 3070	The franchisor attempts to terminate, modify, or refuses to continue the franchise.
3062(a)(1), 3072(a)(1)	The franchisor attempts to establish an additional dealer or relocate an existing dealer within the relevant market area (any area within a radius of 10 miles from the site of a potential new dealership) where the same line-make is already represented.
3062(a)(2)	The franchisor attempts to establish an additional satellite warranty facility or relocate an existing satellite warranty facility within 2 miles of any dealership of the same line-make. (<u>Note:</u> there are no comparable provisions for RV dealers.)
3064, 3074	Disputes relating to the dealer's delivery and preparation obligations, and compensation for such services.
3065, 3075	Disputes relating to reimbursement for warranty work performed by the dealer.
3065.4	Disputes relating to a franchisee's retail labor rate or retail parts rate or its franchisor's proposed adjusted retail labor rate or retail parts rate. (<u>Note:</u> there are no comparable provisions for RV dealers.)
3065.1, 3076	Disputes relating to reimbursement for franchisor incentive programs.
3065.3(a)	Disputes relating to whether a franchisor's performance standard, sales objective or program for measuring a dealer's sales, service, or customer service performance is inconsistent with the standards set forth in subdivision (g) of Section 11713.13. (<u>Note:</u> there are no comparable provisions for RV dealers.)
3065.3(b)	Disputes relating to whether a franchisor's allocation of vehicles or parts is inconsistent with the standards set forth in subdivision (a) of Section 11713.3. (<u>Note:</u> there are no comparable provisions for RV dealers.)

Vehicle Code Section	Provision
3065.3(c)	Disputes relating to whether a franchisor's imposition of a facility or equipment policy is inconsistent with the standards set forth in subdivision (a), (b), (c), or (k) of Section 11713.13. (<u>Note:</u> there are no comparable provisions for RV dealers.)
3065.3(d)	Disputes relating to whether a franchisor is competing with a dealer in violation of subdivision (o) of Section 11713.3. (<u>Note:</u> there are no comparable provisions for RV dealers.)

Separate Protests

A separate protest is required if there is more than one franchise.⁴ For example, if a franchised dealer files a single protest to the attempted termination of its Chrysler, Dodge, Jeep, and RAM franchises, consistent with Vehicle Code section 3050 and 13 CCR § 583, the Board requires the dealer to file an amended protest for one of its franchises, i.e., Chrysler, and new protests for the other three franchises, i.e., Dodge, Jeep, and RAM.

Filing Protest

Most protests have specific statutorily imposed time limits for filing. A protest is deemed filed upon its receipt by the Board via regular mail, email or facsimile,⁵ or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be emailed to the Board at nmvpb@nmvpb.ca.gov or sent by certified or registered mail to 2415 1st Avenue, MS L242, Sacramento, CA 95818.

⁴ Vehicle Code section 331 defines a "franchise" in part as follows: "a written agreement between two or more persons having all of the following conditions:

- (1) A commercial relationship of definite duration or continuing indefinite duration.
- (2) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail new motor vehicles or new trailers subject to identification pursuant to Section 5014.1 manufactured or distributed by the franchisor or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities.
- (3) The franchisee constitutes a component of the franchisor's distribution system.
- (4) The operation of the franchisee's business is substantially associated with the franchisor's trademark, trade name, advertising, or other commercial symbol designating the franchisor.
- (5) The operation of a portion of the franchisee's business is substantially reliant on the franchisor for a continued supply of new vehicles, parts, or accessories."

A recreational vehicle franchise is defined in Vehicle Code section 331.3 as "a written agreement between two or more persons having both of the following conditions: (a) A commercial relationship of definite duration or continuing indefinite duration; and (b) The franchisee is granted the right to offer for sale or lease, or to sell or lease at retail, new recreational vehicles, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, that are manufactured or distributed by the franchisor, or the right to perform authorized warranty repairs and service, or the right to perform any combination of these activities."

⁵ A franchisee seeking to file a protest via facsimile (fax) is requested to contact the Board's legal staff in advance at (916) 445-1888 or nmvpb@nmvpb.ca.gov.

Franchisor's Notice of Appearance

The respondent shall file a written notice of appearance within 15 days of receipt of the protest (13 CCR § 585.1). Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

Filing Fee

A filing fee of \$200, which should be in the form of a check, ~~or~~ money order ~~or an authorized credit card charge~~ payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. ~~Information on paying by credit online is available by contacting the Board at (916) 445-1888 or via email at nmvp.ca.gov.~~ Either the protestant or respondent may submit a request for a fee waiver. The Executive Director, upon a showing of good cause, may waive the \$200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.)

Interested Individuals

Per Vehicle Code sections 3066 and 3080, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

Motion for Intervention

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 to intervene in a pending protest subject to the conditions set forth in 13 CCR § 551.13.

Challenge to Presiding Officer

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12(b) entitles a party, excluding an intervenor, in a protest to one disqualification without cause (peremptory challenge) of the assigned merits ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the merits ALJ or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier (13 CCR § 551.12(b)(1)). In the event a Board ALJ is unavailable to preside over the merits hearing, an ALJ from the Office of Administrative Hearings ("OAH") will be assigned.⁶ A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery

⁶ At the January 25, 2023, General Meeting, the Board added OAH to the "Merit Hearings Judge Assignment Log." This will allow the Board to determine whether OAH is an effective alternative if the Board is unable to retain its merits ALJs. At the April 28, 2023, General Meeting, the Board granted temporary discretion (not to exceed 3 years) to the Executive Director to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee permission.

disputes. Except for the convenience of the Board or for good cause shown, no merits hearing shall be continued by the filing of a peremptory challenge.

Amicus Curiae Briefs

The Board, its Executive Director, or an ALJ may, in ~~his or her~~ their discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

Table of Contents for Protest Section

The chart below identifies the section and page numbers for procedural requirements particular to each type of protest but should be relied on only as a guide.

Protest Section of Guide	Page Nos.
Termination of the Franchise	13-17
Modification of the Franchise	18-21
Additional or Relocated Franchise	22-26
Additional or Relocated Satellite Warranty Facility (Motor Vehicle Dealers)	27-30
Compensation for Delivery and Preparation	31-32
Compensation for Warranty Reimbursement (Motor Vehicle Dealers)	33-39
Retail Labor Rate or Retail Parts Rate	40-49
Compensation for Warranty Reimbursement (RV Dealers)	50-52
Compensation for Franchisor Incentive Program Reimbursement (Motor Vehicles Dealers)	53-58
Compensation for Franchisor Incentive Program Reimbursement (RV Dealers)	59-60
Performance Standards	61-64
Allocation of Vehicles or Parts	61-64
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Franchisor Competing with a Dealer	65-66
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TERMINATION OF FRANCHISE

Statutory Authority for Protest

Vehicle Code sections 3060 and 3070 give the dealer the right to protest an attempt by the manufacturer or distributor to terminate or refuse to continue an existing franchise agreement.

Franchisor's Notice of Termination

Vehicle Code sections 3060 and 3070 provide that no franchisor (manufacturer or distributor) shall terminate or refuse to continue a franchise (sales and service agreement) unless written notice of the franchisor's intent to terminate has been received by both the franchisee (dealer) and the Board. The notice must set forth the specific grounds for termination and must contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, one of the following statements:

(When a 60-day notice of termination or refusal to continue is given.)

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

(When a 15-day notice of termination is given.)

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Termination notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if American Honda seeks to terminate a motorcycle/ATV/scooter dealership and has a separate franchise for each line-make, then there should be three separate termination notices sent to the franchisee and the Board.

Time for Filing a Protest

It is essential not to confuse the time within which to file a protest with the Board with the time at which a termination becomes effective. The time at which the termination will become effective is governed by the reasons for termination. The chart below identifies the reasons for termination, corresponding protest filing periods, and effective dates of termination.

Reason for Termination	Filing Period	Effective Date of Termination
Transfer of any ownership or interest in the franchise without the consent of the franchisor. The consent shall not be unreasonably withheld.	10 days from dealer's receipt of notice or 10 days after the end of any appeal procedure provided by the franchisor.	15 days after dealer's receipt of notice.
Misrepresentation by the franchisee in applying for the franchise.	As above.	As above.
Insolvency of the franchisee, or the filing of any petition by or against the franchisee under any bankruptcy or receivership law.	As above.	As above.
Any unfair business practice after written warning thereof.	As above.	As above.
Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle (recreational vehicle) dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle (recreational vehicle) dealer or by order of the Department.	As above.	As above.
Any other reason.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice.

The protest shall be considered filed on the date of receipt via regular mail, email or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in automatic termination of the franchise as of the time indicated in the notice of termination. Filing a timely protest will prevent the termination from becoming effective until the protest is resolved by the Board.

Required Elements of a Protest

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest to the proposed termination or non-renewal of a franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ⁷	13 CCR § 583
Must be responsive to the specific grounds of the termination set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

⁷ If the franchisee is a natural person, not a corporation or other legal entity, the protest shall be signed by that person or by the franchisee's attorney or representative. If the franchisee is a corporation or other legal entity, the protest shall be signed by an attorney representing the entity, or by an authorized representative of the entity (13 CCR § 583).

Good Cause

If a timely protest is filed, the manufacturer or distributor cannot terminate the franchise until a hearing has been held and the Board acts on the proposed decision. At a hearing, the manufacturer or distributor will have the burden of proving “good cause” for termination. In making a determination of good cause under Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to all of the following:

Circumstances	Vehicle Code Section
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (<u>Note:</u> In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (<u>Note:</u> In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee’s failure to comply with the terms of the franchise.	3061(g), 3071(g)

Determination of Protest

If the franchisor, having the burden, cannot establish good cause for terminating the franchise, the protest will be sustained, and the termination will not be permitted.

MODIFICATION OF FRANCHISE

Statutory Authority for Protest

Vehicle Code sections 3060(b) and 3070(b) give the dealer the right to protest an attempt by the manufacturer or distributor to modify or replace an existing franchise such that the modification substantially affects the dealer's sales or service obligations or investment.

Franchisor's Notice of Modification

Vehicle Code sections 3060 and 3070 provide that no franchisor shall modify or replace an existing franchise with a succeeding franchise if the modification or replacement would substantially affect the existing franchisee's sales or service obligations or investment, unless written notice of modification or replacement is given to each affected franchisee and the Board at least 60 days prior to the modification or replacement.⁸

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived.

Modification notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

Time for Filing a Protest

Filing a timely protest will prevent the modification from becoming effective until the protest is resolved by the Board. It is essential not to confuse the time within which to file a protest with the Board with the time at which a modification becomes effective. The chart below identifies the protest filing period and effective date of modification:

⁸ Despite the franchisor's decision that the notices to the franchisee and the Board are not required, to avoid a claim that it has violated any of the Vehicle Code provisions, a franchisor may decide to issue notices that comply with the statutes. The franchisor also may at the same time expressly state, along with the notices or in the notices themselves, that the franchisor believes that the notices were not required and also claim that there is no right in the franchisee to file a protest despite the notices stating to the contrary (as required by the statutory language).

Reason for Modification	Filing Period	Effective Date of Modification
As stated by franchisor.	30 days from dealer's receipt of notice or 30 days after the end of any appeal procedure provided by the franchisor.	60 days after dealer's receipt of notice.

The protest shall be considered filed on the date of receipt via regular mail, email or facsimile by the Executive Director of the Board or on the date of certified or registered mailing. A document which purports to be a protest will not be "filed" until the Executive Director has reviewed it for compliance with the Board's enabling statutes and regulations. If the Executive Director deems the document complies, it shall be filed as a protest (13 CCR § 598).

Failure of a dealer to file a timely protest with the Board will result in a loss of the right to a hearing before the Board. This could result in the modification becoming effective as stated in the notice. Filing a timely protest will prevent the modification or replacement from becoming effective until the protest is resolved by the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code sections 3060 and 3070 is described in 13 CCR § 585. A protest of modification or replacement of an existing franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ⁹	13 CCR § 583
Must be responsive to the specific grounds of the modification or replacement set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

Good Cause

If a timely protest is filed, the manufacturer or distributor cannot modify the franchise if such modification would substantially affect a dealer's sales or service obligations or investment until a hearing has been held by the Board. At the hearing, the dealer has the initial burden to establish that there is a proposed modification, which would substantially affect the dealer's sales or service obligations or investment. If the dealer meets this burden, the burden of proof shifts to the manufacturer or distributor to prove "good cause" for the modification. In making a determination of good cause pursuant to Vehicle Code sections 3061 or 3071, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

⁹ See footnote 7.

Circumstances	Vehicle Code Section
Amount of business transacted by the franchisee, as compared to the business available to the franchisee.	3061(a), 3071(a)
Investment necessarily made and obligations incurred by the franchisee to perform its part of the franchise.	3061(b), 3071(b)
Permanency of the investment.	3061(c), 3071(c)
Whether it is injurious or beneficial to the public welfare for the franchise to be modified or replaced or the business of the franchisee disrupted.	3061(d), 3071(d)
Whether the franchisee has adequate motor vehicle or recreational vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumers for the motor vehicles or recreational vehicles handled by the franchisee and has been and is rendering adequate services to the public. (<u>Note:</u> In the case of RVs, not all franchise agreements require service facilities, equipment, vehicle parts, and qualified service personnel.)	3061(e), 3071(e)
Whether the franchisee fails to fulfill the warranty obligations of the franchisor to be performed by the franchisee. (<u>Note:</u> In the case of RVs, not all franchise agreements require franchisees to have warranty obligations.)	3061(f), 3071(f)
Extent of the franchisee's failure to comply with the terms of the franchise.	3061(g), 3071(g)

Determination of Protest

The modification will not be permitted if the Board decides the manufacturer or distributor failed to establish good cause for the intended modification.

If a replacement franchise is the successor franchise to an expiring or expired term franchise, the prior franchise shall continue in effect until resolution of the protest by the Board. In the event of multiple protests, hearings shall be consolidated to expedite the disposition of the issue.

ADDITIONAL OR RELOCATED FRANCHISE

Statutory Authority for Protest

Vehicle Code sections 3062(a)(1) and 3072(a)(1) give a dealer the right to protest the establishment of an additional dealership or relocation of an existing dealership of the same line-make within a ten-mile radius of the proposed new or relocating dealership. Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its dealers.

NOTE: The proposed new dealer, or the existing dealer seeking to relocate, may appear in the proceedings as an interested individual. The rights of an interested individual to participate in the proceedings are somewhat limited, and subject to the ALJ's management of the hearing. In general, interested individuals have no right to formal discovery or right of cross-examination at the hearing.

Franchisor's Notice of Additional or Relocated Franchise

Vehicle Code sections 3062(a)(1) and 3072(a)(1)¹⁰ require that the manufacturer or distributor must first give written notice to the Board and to dealerships of the "same line-make" within the "relevant market area" of the proposed new or relocating dealership.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Establishment and relocation notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make. For example, if General Motors LLC seeks to establish an additional Buick/Cadillac/GMC dealership and has a separate franchise for each line-make, then there should be separate establishment notices sent to each franchisee of any of the three line-makes within the relevant market area of the proposed new location (as defined in Vehicle Code section 507) and the Board.

For motor vehicles other than RVs, "line-make" is not defined in the code. What is or is not a same

¹⁰ The last sentence in the "Notice to Dealer" language in Section 3072(a) contains commas as follows: "If, within this time, you file with the board . . ."

“line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the Department as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL 124 Form (Certificate of Proposed Franchise) relevant market area requirements. For instance, in the automotive industry, a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make”, in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado and Tahoe “lines” or models.

For the RV industry, which lacks uniformity, “recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.3.” It is essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure that their makes are registered with the Department.

Relevant market area is defined in Vehicle Code section 507 as “any area within a radius of 10 miles from the site of a potential new dealership.” The distance is determined by a straight-line measurement between the nearest points of the new dealership’s location and the protesting dealership’s location. There are times when a survey will be necessary to determine whether a dealer desiring to protest is within the relevant market area.

Exceptions to the Right to Protest

New Motor Vehicle Dealers (including RVs)

There are exceptions to the requirement of notice to existing dealers within the relevant market area of a franchisor’s intent to establish or relocate a dealership. These exceptions are located in Vehicle Code sections 3062 and 3072, and provide that no notice is required to be given, and there is no right to protest, if:

1. The relocation is of an existing dealership to a location that is both within the same city as, and is within one mile from, the existing (relocating) dealership location;
2. The establishment of a dealership at the same location of a dealership that has been out of operation for less than one year;
3. The relocation entails the establishment at a location of a dealership that is both within the same city as, and is within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days; or
4. The establishment entails a display of vehicles at fairs, expositions, or similar exhibits provided that no actual sales are made at the event and the display does not exceed 30 days.

Vehicle Code sections 3062 and 3072 require that if an “off-site sale” is intended, the manufacturer or distributor must give notice to all dealers of the same line-make within 10 miles of the proposed site. Such dealers would have a right to protest the off-site sale, even though a financial institution and a licensed dealer sponsor the event.

Recreational Vehicle Dealers Only

For RVs, the exceptions to notice requirements are found in Vehicle Code section 3072. The exceptions are essentially the same as provided in Vehicle Code 3062 as stated above with the addition of one more exception. That one exception is for an annual show sponsored by a national trade association of recreational vehicle manufacturers that complies with all of the requirements of subdivision (d) of Vehicle Code section 11713.15.¹¹ (Veh. Code § 3072(b)(4))

Time for Filing a Protest

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the dealership until the Board resolves the protest.

The chart below identifies the protest filing period and effective date of the relocation or establishment of a dealership.

Type of Notice	Filing Period	Effective Date of Relocation/ Establishment
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

If, within the above filing period, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed within the statutory filing period, the manufacturer or distributor will be able to establish the proposed dealership or relocate the existing dealership without proceeding before the Board.

¹¹ Effective September 19, 2018, subdivision (d) of Vehicle Code section 11713.15 was amended to except a recreational vehicle dealer being issued a temporary branch license from the notice requirements if the show is located in a county with a population of 9,000,000 or more persons, or at a location within 30 miles from the prior approved location of the show, and at least 10 manufacturers are participating in the show. (Assembly Bill 2330, Stats. 2018, Ch. 537)

Required Elements of Protest

The required content of a protest pursuant to Vehicle Code sections 3062 and 3072 is set forth in detail in 13 CCR § 585. A protest of the relocation or establishment of a franchise must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ¹²	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

¹² See footnote 7.

Good Cause

If a timely protest is filed, the manufacturer or distributor cannot establish an additional franchise or relocate an existing franchise until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional dealer or relocation of an existing dealership. In making a determination of good cause pursuant to Vehicle Code sections 3063 or 3073, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	Vehicle Code Section
Permanency of the investment.	3063(a), 3073(a)
Effect on the retail motor vehicle (recreational vehicle) business and the consuming public in the relevant market area.	3063(b), 3073(b)
Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.	3063(c), 3073(c)
Whether the franchisees of the same line-make or same recreational vehicle line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make or recreational vehicle line-make in the market area. This includes the adequacy of motor vehicle or recreational vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel. (<u>Note:</u> For RVs, adequate sales shall be considered, however, not all RV franchise agreements require service facilities, equipment, supply of vehicle parts, and qualified service personnel.)	3063(d), 3073(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e), 3073(e)

Determination of Protest

If the Board decides the protesting dealer cannot prove good cause to prevent the establishment or relocation, the manufacturer or distributor will be permitted to proceed with its intended action.

ADDITIONAL OR RELOCATED SATELLITE WARRANTY FACILITY

Statutory Authority for Protest

Vehicle Code section 3062(a)(2) gives a new motor vehicle dealer the right to protest an additional satellite warranty facility or the relocation of an existing satellite warranty facility within 2 miles of any dealership of the same line-make. Satellite warranty facility is defined as “a facility operated by a franchisee where authorized warranty repairs and service are performed and the offer for sale or lease, the display for sale or lease, or the sale or lease of new motor vehicles is not authorized to take place.” (Veh. Code § 3062(e)(2)) Any protest filed pursuant to this section is, by statute, filed against the manufacturer or distributor that is attempting to establish or relocate one of its satellite warranty facilities. There are no comparable statutory provisions for RV dealers for such protests.

Franchisor’s Notice of Additional or Relocated Satellite Warranty Facility

Vehicle Code section 3062(a)(2) requires that the manufacturer or distributor must first give written notice to the Board and to dealerships of the same line-make within 2 miles of the proposed location.

The written notice shall contain, on the first page thereof in at least 12-point bold type and circumscribed by a line, the following statement:

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

The notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and 13 CCR § 593.1. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

Time for Filing a Protest

Filing a timely protest will preclude the manufacturer or distributor from establishing or relocating the satellite warranty facility until the protest is resolved by the Board. The chart on the next page identifies the protest filing period and effective date of the relocation or establishment of a satellite warranty facility.

If, within the filing period set forth in the table, a franchisee files with the Board a request for additional time to file a protest, the Board or its Executive Director, on a showing of good cause, may grant an additional 10 days to file the protest.

If no protest is filed, or if the protest is not filed in time, the manufacturer or distributor will be able to establish the proposed satellite warranty facility or relocate the existing satellite warranty facility without proceeding before the Board.

Type of Notice	Filing Period	Effective Date of Relocation/ Establishment
A notice by franchisor of intent to establish or relocate franchisee.	20 days from dealer's receipt of notice or 20 days after the end of any appeal procedure provided by the franchisor, whichever is later.	As stated by franchisor.

Required Elements of Protest

The required content of a protest under Vehicle Code section 3062(a)(2) is described in 13 CCR § 585. A protest of the relocation or establishment of a satellite warranty facility must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ¹³	13 CCR § 583
Must be responsive to the specific grounds of the establishment or relocation of the satellite warranty facility set forth in the notice and set forth clearly and concisely the factual contentions of the franchisee with respect to the matter referred to in the notice.	13 CCR § 585(b)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 585(d)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 585(e)
Franchisee shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 585(f)
Franchisee shall request a pre-hearing conference if one is desired.	13 CCR § 585(g)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 585(c)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

Good Cause

If a timely protest is filed, the manufacturer or distributor cannot establish an additional satellite warranty facility or relocate an existing satellite warranty facility until the protest is resolved by the Board. At the hearing, the protesting dealer has the burden of proving that there is good cause to prevent the establishment of the additional satellite warranty facility or relocation of an existing satellite warranty facility.

¹³ See footnote 7.

In making a determination of good cause pursuant to Vehicle Code section 3063, the Board shall take into consideration the existing circumstances, including, but not limited to, all of the following:

Circumstances	Vehicle Code Section
Permanency of the investment.	3063(a)
Effect on the retail motor vehicle business and the consuming public in the relevant market area.	3063(b)
Whether it is injurious to the public welfare for an additional franchise to be established or an existing dealership to be relocated.	3063(c)
Whether the franchisees of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of the line-make in the market area, which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of vehicle parts, and qualified service personnel.	3063(d)
Whether the establishment of an additional franchise would increase competition and therefore be in the public interest.	3063(e)

Determination of Protest

If the Board decides the protesting dealer is unable to prove good cause not to allow the establishment or relocation of the satellite warranty facility, the manufacturer or distributor will be permitted to proceed with its intended action.

COMPENSATION FOR DELIVERY AND PREPARATION

Statutory Authority

Vehicle Code sections 3064 and 3074 require every new motor vehicle or recreational vehicle manufacturer and distributor to specify the dealer's delivery and preparation obligations prior to the delivery of new motor vehicles or new recreational vehicles to retail buyers.

Franchisor's Notice of Compensation for Delivery and Preparation

Manufacturers and distributors are required to file with the Board a copy of the delivery and preparation obligations and a schedule of compensation to be paid to the dealers for the work and services they are required to perform in connection with the delivery and preparation obligations. The schedule of compensation must be reasonable with the issue of reasonableness being subject to the approval of the Board. In order to initiate Board action, a franchisee must file a protest with the Board.

Time for Filing a Protest

There is no specific statutory time period in the Vehicle Code within which to file a protest involving delivery and preparation obligations and compensation. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code sections 3064 and 3074 is described in 13 CCR § 586. A protest involving delivery and preparation obligations must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ¹⁴	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, <u>or</u> money order <u>or an authorized credit card charge</u> payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

Determination of Protest

If a dealer files a protest challenging the reasonableness of the schedule, the Board will resolve the dispute in light of all the relevant circumstances including, but not limited to, the time required to perform each function.

If there is a hearing, the dealer has the burden of proving that the schedule of compensation is not reasonable (Veh. Code §§ 3066(c) and 3080(c)).

¹⁴ See footnote 7.

WARRANTY CLAIMS - Motor Vehicle Dealers

Franchisor's Notice of Compensation for Warranty Reimbursement

Vehicle Code section 3065(a) requires every new motor vehicle manufacturer or distributor (franchisor) to properly fulfill every warranty agreement made by it and to adequately and fairly compensate its dealers (franchisees) for labor and parts used to satisfy the warranty obligations of the franchisor, including but not limited to diagnostics, repair, service, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a warranty repair. (Veh. Code § 3065(a))

Franchisors are required to use time allowances for the diagnosis and performance of work and service that are reasonable and adequate for a qualified technician to perform the work or services. (Veh. Code § 3065(a)(1))

Additionally, “[a] franchisor shall not unreasonably deny a written request submitted by a franchisee for modification of a franchisor’s uniform time allowance for a specific warranty repair, or a request submitted by a franchisee for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the franchisor to assess the merits of the franchisee’s request.” (Veh. Code § 3065(a)(1))

Manufacturers and distributors are required to file copies of their warranty reimbursement schedules with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty diagnostics, repair, and service. (Veh. Code § 3065(a))

Reasonableness of the Warranty Reimbursement Schedule

Subdivision (b) of Section 3065 was amended to clarify what constitutes a reasonable warranty reimbursement schedule: “a franchisor shall compensate each of its franchisees for parts and labor at rates equal to the franchisee’s retail labor rate and retail parts rate, as established pursuant to Section 3065.2.” Effective January 1, 2020, a franchisee no longer has a protest right to contest the reasonableness of its franchisor’s warranty reimbursement schedule or formula. (Veh. Code § 3065(b))

A franchisee and a franchisor can enter into a “voluntary written agreement signed by both parties that compensates for labor and parts used to satisfy the warranty obligations of the franchisor at rates other than the franchisee’s retail rates, provided that the warranty reimbursement schedule adequately and fairly compensates the franchisee.” (Veh. Code § 3065(b))

Protest of Pre-Repair Challenges to the Reduction in Time and Compensation (Labor Time Guides) Applicable to Specific Parts or Labor Operations

Manufacturers and distributors are prohibited from imposing a fixed percentage or other reduction in the time or compensation allowed to the dealer for warranty repairs not attributable to a specific

repair. (Veh. Code § 3065(a)(2))

The time or compensation applicable to a specific warranty repair may be reduced only upon 15 days' prior written notice to the dealer. (Veh. Code § 3065(a)(2))

A franchisee can file a protest to challenge the reduction in time or compensation applicable to specific parts or labor operations. The protest needs to be filed within 6 months "following the franchisee's receipt of notice of the reduction." If there is a hearing, the franchisor has the burden of "establishing the reasonableness of the reduction and adequacy and fairness of the resulting reduction in time or compensation." (Veh. Code § 3065(a)(3))

Approval of Warranty Claims

Vehicle Code section 3065(d)(1) requires that warranty claims be approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day.

Approved warranty claims must be paid within 30 days of approval. However, Vehicle Code section 3065(d)(5) provides that failure to approve or pay within these time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not violate Article 4 (pertains to motor vehicles other than RVs).

Disapproval of Warranty Claims for a Defective Part

Vehicle Code section 3065(c) requires the franchisor that disallows a franchisee's warranty claim for a defective part on the basis that the part was not defective must return the part to the franchisee at the franchisor's expense, or reimburse the franchisee for the part, at the franchisor's option.

Disapproval of Warranty Claims

A franchisor shall not disapprove a claim unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. Repairs were not properly made;
4. Repairs were inappropriate to correct a warranty failure due to an improper act or omission of the franchisee; or
5. Material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. (Veh. Code § 3065(d)(2))

A franchisor who disapproves a claim is required to notify the franchisee in writing of the disapproval 30 days after receipt by the franchisor and each notice shall state the specific grounds upon which the disapproval is based. (Veh. Code § 3065(d)(3))

Protest of Initial Disapproval of Warranty Claims

A franchisee can file a protest of the initial disapproval of a warranty claim within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(d)(6))

Franchisor Provided “Reasonable” Appeal Process

Vehicle Code section 3065(d)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval.

If the disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the notice to cure any material noncompliance.

If the disapproval is rebutted and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

There are potentially two 30-day time periods: (1) reasonable appeal; and (2) opportunity to cure.

Final Denial of Warranty Claim

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state “Final Denial” on the first page. (Veh. Code § 3065(d)(4))

Protest of Final Denial of Warranty Claim following a Franchisor’s Appeal Process

A franchisee can file a protest of the final denial of a warranty claim following a franchisor’s appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(d)(6))

Audits of Franchisee Warranty Records

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 9 months after a claim is paid or a credit issued.

A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner.

A franchisor may conduct no more than one random audit of a franchisee in a 9-month period.

The franchisor’s notification to the franchisee of any additional audit within a 9-month period shall

be accompanied by written disclosure of the basis for that additional audit. (Veh. Code § 3065(e)(1))

If a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board. (Veh. Code § 3065(f))

Disapproval of Previously Approved Warranty Claims

Previously approved claims shall not be disapproved or charged back to the dealer unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. Repairs were not properly made;
4. Repairs were inappropriate to correct a warranty failure due to an improper act or omission of the franchisee; or
5. Material noncompliance with reasonable and nondiscriminatory documentation and administrative claims submission requirements. (Veh. Code § 3065(e)(2))

A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly, and the extrapolation is performed in a reasonable and statistically valid manner.

If the franchisor disapproves of a previously approved claim following an audit, within 30 days after the audit, the franchisor shall provide to the franchisee a written disapproval notice stating the specific grounds upon which the claim is disapproved. (Veh. Code § 3065(e)(3))

Protest of Warranty Claim Disapproval of a Previously Approved Claim Following an Audit

A franchisee can file a protest of the warranty claim disapproval of a previously approved claim following an audit within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(e)(6))

Franchisor Provided “Reasonable” Appeal Process

Vehicle Code section 3065(e)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure noncompliance, with the period commensurate with the volume of claims under consideration.

If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

Final Denial of Warranty Claim Following an Audit

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state "Final Denial" on the first page. (Veh. Code § 3065(e)(4))

Protest of Final Denial of Warranty Claim Following an Audit Following the Franchisor's Appeal Process

A franchisee can file a protest of the final denial of a warranty claim following an audit following the franchisor's appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065(e)(6))

Franchisor Chargeback for Warranty Claims

Vehicle Code section 3065(e)(5) provides that the franchisor shall not chargeback the franchisee until 45 days after receipt of the written disapproval of a previously approved claim following an audit or final denial of warranty claim following an audit following the franchisor's appeal process, whichever is later.

Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of receipt of that written notice.

If the franchisee files a protest pursuant to this subdivision prior to the franchisor's chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the Board issues a final order on the protest.

If the Board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

In summary, days 45-90 are the only days to chargeback a dealer for warranty claims. A manufacturer or distributor cannot chargeback a dealer before day 44, or after day 91. But if a protest is filed prior to a chargeback, then the franchisor cannot chargeback the dealer during the above time period. It must wait until the Board decides the protest and if the protest is dismissed or the Board sustains the chargeback, then the franchisor can chargeback the dealer but must do so within 90 days after the Board action (or within time period allowed by settlement agreement, if any).

However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board. (Veh. Code § 3065(f))

Required Elements of Protest

The required content of a protest under Vehicle Code section 3065 is described in 13 CCR § 586. A protest involving warranty claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ¹⁵	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, <u>or</u> money order <u>or an authorized credit card charge</u> payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

¹⁵ See footnote 7.

WARRANTY CLAIMS PROTESTS
Motor Vehicle Dealers

Vehicle Code Section	Type of Protest	Notice to Dealer	Time to File Protest	Burden of Proof if there is a Hearing
3065(a)	Pre-Repair Challenge to the reduction in time and compensation (labor time guides) applicable to specific parts or labor operations	Written notice of reduction provided by the franchisor to the franchisee.	Within 6 months following the franchisee's receipt of the written notice of reduction	Franchisor has burden to establish the reasonableness of the reduction and adequacy and fairness of the resulting compensation (3065(a))
3065(d)(3)	Post-Repair Initial disapproval of warranty claims	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a warranty claim submitted by a franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(d)(4)	Post-Repair/Post-Appeal Final denial of warranty claim following franchisor's appeal process	Notice of Final Denial to the franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(d)(6))
3065(e)(3)	Post-Audit Warranty claim disapproval of a previously approved claim following an audit	Franchisor provides a written Notice of Disapproval within 30 days after the audit stating the specific grounds.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))
3065(e)(4)	Post-Audit/Post-Appeal Final denial of warranty claim following an audit following franchisor's appeal process	Notification of the Final Denial to the franchisee.	Within 6 months after receipt of the written notice	Franchisor has the burden (3065(e)(6))

RETAIL LABOR RATE OR RETAIL PARTS RATE - Motor Vehicle Dealers

Establishment or Modification of Franchisee's Retail Labor Rate or Retail Parts Rate

A franchisee can establish or modify its retail labor rate or retail parts rate no more often than once per calendar year by submitting in writing to its franchisor whichever of the following is ***fewer*** in number:

- 100 sequential qualified repair orders, including any nonqualified repair orders in the same time period.¹⁶
- All repair orders completed during any 90-consecutive-day period.

(Veh. Code § 3065.2(a)(1)(A)-(B))

How a Franchisee Calculates its Retail Labor Rate?

To calculate its ***retail labor rate***, a franchisee shall determine the total charges for labor from the qualified repairs orders submitted as indicated above in Vehicle Code section 3065.2(a)(1)(A)-(B) and divide that amount by the total number of hours. (Veh. Code § 3065.2(a)(2))

How a Franchisee Calculates its Retail Parts Rate?

To calculate its ***retail parts rate***, a franchisee shall determine the total charges for parts from the qualified repair orders submitted as indicated above in Vehicle Code section 3065.2(a)(1)(A)-(B) and divide that amount by the franchisee's total cost of the purchase of those parts, then subtract one, and multiply by 100 to produce a percentage. (Veh. Code § 3065.2(a)(3))

Statutorily Required Notice to the Franchisor by the Franchisee of its Retail Labor Rate and Retail Parts Rate

The franchisee is statutorily required to provide its franchisor with ***notice*** of its retail labor rate and retail parts rate as calculated above. (Veh. Code § 3065.2(a)(4))

How Repair Orders are Submitted Pursuant to Section 3065.2?

A franchisee may submit any of the following to its franchisor:¹⁷

1. For calculating both its retail labor rate and retail parts rate, a franchisee can submit

¹⁶ As used in Vehicle Code section 3065.2(a), a "qualified repair order" is defined as "a repair order, closed at the time of submission, for work that was performed outside of the period of the manufacturer's warranty and paid for by the customer, but that would have been covered by a manufacturer's warranty if the work had been required and performed during the period of the warranty." (Veh. Code § 3065.2(j)) Qualified repair orders submitted under Vehicle Code section 3065.2(a) shall be from a period occurring not more than 180 days before the submission. (Veh. Code § 3065.2(b))

¹⁷ For purposes of Vehicle Code section 3065.2, a franchisee may submit its repair orders electronically to its franchisor. (Veh. Code § 3065.2(b))

a single set of qualified repair orders; or

2. For calculating only its retail labor rate or only its retail parts rate, a franchisee can submit a set of qualified repair orders.

(Veh. Code § 3065.2(b)(1)-(2))

What Types of Charges included in a Repair Order should be Omitted in Calculating a Franchisee's Retail Labor Rate and Retail Parts Rate?

In calculating its retail labor rate and retail parts rate, the franchisee shall omit any charges included in a repair order from the calculation that do not reflect the franchisee's retail customer-pay labor and parts rates including, but not limited to, any of the following:

1. Manufacturer, manufacturer branch, distributor, or distributor branch special events, specials, or promotional discounts for retail customer repairs.
2. Parts sold, or repairs performed, at wholesale.
3. Routine maintenance, including, but not limited to, the replacement of bulbs, fluids, filters, batteries, and belts that are not provided in the course of, and related to, a repair.
4. Items that do not have individual part numbers including, but not limited to, nuts, bolts, and fasteners.
5. Vehicle reconditioning.
6. Accessories.
7. Repairs of conditions caused by a collision, a road hazard, the force of the elements, vandalism, theft, or owner, operational, or third-party negligence or deliberate act.
8. Parts sold or repairs performed for insurance carriers.
9. Vehicle emission inspections required by law.
10. Manufacturer-approved goodwill or policy repairs or replacements.
11. Repairs for government agencies or service contract providers.
12. Repairs with aftermarket parts, when calculating the retail parts rate, but not the retail labor rate.
13. Repairs with aftermarket parts.

14. Replacement of or work on tires, including front-end alignments and wheel or tire rotations.
15. Repairs of motor vehicles owned by the franchisee or an employee thereof at the time of the repair.

(Veh. Code § 3065.2(c)(1)-(15))

A Franchisor may Contest to the Franchisee the “Material Accuracy” of the Retail Labor Rate or Retail Parts Rate by Submitting a “Notification” to the Franchisee

A franchisor may contest to the franchisee the “material accuracy” of the retail labor rate or retail parts rate within 30 days after receiving the statutorily required notice from the franchisee discussed above or, if the franchisor requests supplemental repair orders pursuant to paragraph (4) of Vehicle Code section 3065.2(d), within 30 days after receiving the supplemental repair orders. (Veh. Code § 3065.2(d)(1))

If the franchisor seeks to contest the retail labor rate, retail parts rate, or both, it shall submit no more than one **notification** to the franchisee. (Veh. Code § 3065.2(d)(1))

The notification is limited to the assertion that the rate is “materially inaccurate” or fraudulent, and **shall** include the following:

1. A full explanation of any and all reasons for the allegation;
2. Evidence substantiating the franchisor’s position;
3. A copy of all calculations used by the franchisor in determining the franchisor’s position; and,
4. A proposed **adjusted retail labor rate or retail parts rate**, as applicable, on the basis of the repair orders submitted by the franchisee, or if applicable, on the basis of supplemental repair orders submitted pursuant to Vehicle Code section 3065.2(d)(5).

After submitting the notification, the franchisor shall not add to, expand, supplement, or otherwise modify any element of that notification, including, but not limited to, its grounds for contesting the retail parts rate, retail labor rate, or both under Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(1))

The Franchisor’s Proposed Adjusted Retail Labor Rate or Retail Parts Rate is Effective if the Franchisee Agrees

If the franchisee agrees with the conclusions of its franchisor and any corresponding adjustment to the retail labor rate or retail parts rate then no further action is required. The new adjusted rate is effective as of the 30th calendar day after the franchisor’s receipt of the notice submitted

pursuant to Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(2))

If the Franchisee does not Agree with the Proposed Adjusted Rate then a Protest can be Filed with the Board

In the event the franchisor provides all of the information required in its notification as indicated above, and the franchisee does not agree with the adjusted rate proposed by the franchisor, the franchisor shall pay the franchisee at the franchisor's proposed adjusted retail labor rate or retail parts rate until the Board issues a decision on a protest filed pursuant to Vehicle Code section 3065.4, or until any mutual resolution between the franchisor and the franchisee.

The franchisor's proposed adjusted rate shall be deemed to be effective as of the 30th day after the franchisor's receipt of the notice submitted pursuant to Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(3))

If the Franchisor Determines that the Franchisee's Retail Labor Rate or Retail Parts Rate is "Substantially Higher" than the Franchisee's Current Warranty Rate, the Franchisor can Request Supplemental Repair Orders

Based on the franchisee's set of repair orders submitted, if the franchisor determines that the franchisee's submission for a retail labor rate or retail parts rate is substantially higher than the franchisee's current warranty rate, the franchisor may request, in writing, all repair orders closed within the period of 30 days immediately preceding, or 30 days immediately following, the set of repair orders submitted by the franchisee. The written request should be made within 30 days after the franchisor's receipt of the notice submitted pursuant to Vehicle Code section 3065.2(a). (Veh. Code § 3065.2(d)(4))

If the franchisee fails to provide the **supplemental repair orders**, all time periods under this section shall be suspended until the supplemental repair orders are provided. (Veh. Code § 3065.2(d)(4))

If the franchisor requests supplemental repair orders, the franchisor may calculate a **proposed adjusted retail labor rate or retail parts rate**, as applicable, based upon any set of the qualified repair orders submitted by the franchisee, if the franchisor complies with the requirements outlined in Vehicle Code section 3065.2(d)(5)(A)-(C)

What if the Franchisor does not Contest the Retail Labor Rate or Retail Parts Rate?

If the franchisor does not contest the retail labor rate or retail parts rate, or if the franchisor fails to timely contest the rate submitted by the franchisee, the uncontested retail labor rate or retail parts rate takes effect on the 30th day after the franchisor's receipt of the notice.

The franchisor shall use the new retail labor rate or retail parts rate, or both, if applicable, to determine compensation to fulfill warranty obligations by the franchisee. (Veh. Code § 3065.2(e))

Considerations in Calculating the Retail Labor Rate and Retail Parts Rate

When calculating the retail parts rate and retail labor rate, all of the following shall apply:

1. Promotional reward program cash-equivalent pay methods shall not be considered discounts.
2. The franchisor is prohibited from establishing or implementing a special part or component number for parts used in warranty work, if the result of the special part or component lowers compensation to the franchisee below that amount calculated pursuant to this section.

This paragraph does not apply to parts or components that are subject to a recall and are issued a new special part or component number.

This paragraph does not prohibit a franchisor from changing prices of parts in the ordinary course of business.

(Veh. Code § 3065.2(f)(1)-(2)(A)-(B))

Considerations when the Franchisor is Compensating the Franchisee for the Retail Parts Rate

When the franchisor is compensating the franchisee for the **retail parts rate**, all of the following shall apply:

1. If the franchisor furnishes a part to a franchisee at no cost for use in performing warranty obligations, the franchisor shall compensate the franchisee the amount resulting from multiplying the wholesale value of the part by the franchisee's retail parts rate determined pursuant to Vehicle Code section 3065.2.
2. If the franchisor furnishes a part to a franchisee at a reduced cost for use in performing warranty obligations, the franchisor shall compensate the franchisee the amount resulting from multiplying the wholesale value of the part by the franchisee's retail parts rate determined pursuant Vehicle Code section 3065.2, plus the franchisee's cost of the part.
3. The **wholesale value of the part**, for purposes of Vehicle Code section 3065.2(g), shall be the greater of:
 - A. The amount the franchisee paid for the part or a substantially identical part if already owned by the franchisee.
 - B. The cost of the part shown in a current franchisor's established price schedule.

- C. The cost of a substantially identical part shown in a current franchisor's established price schedule.

(Veh. Code § 3065.2(g)(1)-(3)(A)-(C))

The Method for Establishing or Modifying a Franchisee's Retail Labor Rate, Retail Parts Rate, or Both

A franchisee's retail labor rate, retail parts rate, or both shall be calculated only using the method prescribed in Vehicle Code section 3065.2.

A franchisor shall not use or require a franchisee to use any other method including, but not limited to, any of the following:

1. Substituting any other "purported repair sample" for that submitted by a franchisee.
2. Imposing any method related to the establishment of a retail labor rate or retail parts rate that is unreasonable or time consuming, or require the use of information that is unreasonable or time consuming to obtain, including part-by-part or transaction-by-transaction calculations or utilization of the franchisee's financial statement.
3. Unilaterally calculating a retail labor rate or retail parts rate for a franchisee, except as provided in Vehicle Code section 3065.2(d).
4. Using a franchisee's sample, submitted for establishing or increasing its retail parts rate, to establish or reduce the franchisee's retail labor rate or using a franchisee's sample, submitted for establishing or increasing its retail labor rate, to establish or reduce the franchisee's retail parts rate.

(Veh. Code § 3065.2(h)(1)-(4))

What Actions Franchisors are Precluded from Undertaking?

Subdivision (i) of Vehicle Code section 3065.2 precludes a franchisor from:

1. Attempting to influence a franchisee to implement or change the prices for which the franchisee sells parts or labor in retail repairs because the franchisor is seeking compensation or exercising any right pursuant to this section.
2. Directly or indirectly, taking or threatening to take any adverse action against a franchisee for seeking compensation or exercising any right pursuant to Vehicle Code section 3065.2, by any action including, but not limited to, the following:
 - A. Assessing penalties, surcharges, or similar costs to a franchisee.
 - B. Transferring or shifting any costs to a franchisee.

- C. Limiting allocation of vehicles or parts to a franchisee.
- D. Acting or failing to act other than in good faith.
- E. Hindering, delaying, or rejecting the proper and timely payment of compensation due under Vehicle Code section 3065.2 to a franchisee.
- F. Establishing, implementing, enforcing, or applying any discriminatory policy, standard, rule, program, or incentive regarding compensation due under Vehicle Code section 3065.2.
- G. Conducting or threatening to conduct nonroutine or nonrandom warranty, nonwarranty repair, or other service-related audits in response to seeking compensation or exercising any right pursuant to Vehicle Code section 3065.2.

(Veh. Code § 3065.2(i)(1)-(2)(A)-(G))

Subdivision (i) does not prohibit a franchisor from increasing prices of vehicles or parts in the ordinary course of business. (Veh. Code § 3065.2(i)(3))

Protest for Franchisor's Failure to Comply with Section 3065.2 or if Franchisee Disputes the Franchisor's Proposed Adjusted Retail Labor Rate or Retail Parts Rate

If a franchisor ***fails to comply*** with Vehicle Code section 3065.2, or if a franchisee disputes the franchisor's ***proposed adjusted retail labor rate or retail parts rate***, the franchisee may file a protest with the Board for a declaration of the franchisee's retail labor rate or retail parts rate.

If there is a hearing, the franchisor has the burden of proof that it complied with Vehicle Code section 3065.2 and that the franchisee's determination of the retail labor rate or retail parts rate is materially inaccurate or fraudulent. (Veh. Code § 3065.4(a))

Time for Filing a Protest

Protests pertaining to compliance with Section 3065.2 or franchisee disputes of the franchisor's proposed adjusted retail labor rate or retail parts rate are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code section 3065.4 is described in 13 CCR § 586. A protest involving retail labor rate or retail parts rate must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ¹⁸	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, <u>or</u> money order <u>or an authorized credit card charge</u> payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

Determination of Protest

In a decision, the Board may determine the difference between the amount the franchisee has actually received from the franchisor for fulfilled warranty obligations and the amount that the franchisee would have received if the franchisor had compensated the franchisee at the retail labor rate and retail parts rate as determined in accordance with Vehicle Code section 3065.2 for a period beginning 30 days after receipt of the franchisee's initial submission under Vehicle Code section 3065.2(a). (Veh. Code § 3065.4(b))

The franchisee may submit a request to the franchisor to calculate the unpaid warranty reimbursement compensation and the franchisor shall provide this calculation to the franchisee within 30 days after receipt of the request. The request for the calculation will also be deemed a

¹⁸ See footnote 7.

request for payment of the unpaid warranty reimbursement compensation. (Veh. Code § 3065.4(b))

If the franchisor fails to make full payment within 30 days after the franchisee submits a request for payment, the franchisee may file an action in superior court for injunctive and other relief to enforce the determination or order of the Board. The franchisee may also recover in superior court its actual expenses in bringing and maintaining an enforcement action. (Veh. Code § 3065.4(c))

Either the franchisor or the franchisee may seek judicial review of the Board's determination pursuant to Vehicle Code section 3068. (Veh. Code § 3065.4(d))

RETAIL LABOR RATE OR RETAIL PARTS RATE PROTESTS
Motor Vehicle Dealers

Vehicle Code Section	Type of Protest	Notice	Time to File Protest	Burden of Proof if there is a Hearing
3065.4(a)	Franchisee contends its franchisor failed to comply with Section 3065.2 pertaining to the establishment or modification of the franchisee's retail labor rate, retail parts rate, or both	Franchisee provides notice to the franchisor of its retail labor rate and retail parts rate calculated in accordance with Section 3065.2(a)	None specified	Franchisor has the burden of proof that it complied with Section 3065.2 (3065.4(a))
3065.4(a)	Franchisee disputes the franchisor's proposed adjusted retail labor rate or retail parts rate	Franchisor may contest to the franchisee the material accuracy of the retail labor rate or retail parts rate that was calculated by the franchisee under Section 3065.2(d) within 30 days after receiving notice from the franchisee or, if the franchisor requests supplemental repair orders pursuant to Section 3065.2(d)(4), within 30 days after receiving the supplemental repair orders (3065.2(d)(1))	None specified	Franchisor has the burden of proof that the franchisee's determination of the retail labor rate or retail parts rate is "materially inaccurate or fraudulent" (3065.4(a))

WARRANTY CLAIMS - RV Dealers

Statutory Authority

Vehicle Code section 3075 requires every new recreational vehicle manufacturer or distributor to properly fulfill every warranty agreement made by it and adequately and fairly compensate its dealers for labor and parts used to perform warranty repairs and service.

Franchisor's Notice of Compensation for Warranty Reimbursement

The manufacturers and distributors are required to file copies of their warranty reimbursement schedules or formulas with the Board. The schedule or formula must be reasonable with respect to the time and compensation allowed for the performance of warranty work.

Approval of Warranty Claims

Vehicle Code section 3075(d) also requires that warranty claims be approved or disapproved within 30 days after their receipt by the franchisor. Any claim not specifically disapproved in writing within 30 days from receipt by the franchisor shall be deemed approved on the 30th day.

Approved warranty claims must be paid within 30 days of approval. However, Vehicle Code section 3075(d) states: "Failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of this article [Article 5 RV protests]."

Disapproval of Warranty Claims

Vehicle Code section 3075(c) requires that the franchisor that disallows a franchisee's warranty claim for a defective part on the basis that the part was not defective must return such part to the dealer at the franchisor's expense, or reimburse the dealer for the part, at the franchisor's option.

The dealer is also entitled to written notice of disapproval within 30 days after the warranty claims are received by the franchisor. The notice must contain the specific grounds for disapproval (Veh. Code § 3075(d)).

Audits of Franchisee Warranty Records

Audits of franchisee warranty records may be conducted by the franchisor on a reasonable basis, and for a period of 12 months after a claim is paid or a credit issued. Any chargeback to a franchisee for warranty parts or service compensation shall be made within 90 days of the completion of the audit. However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor obtains an order from the Board. (Veh. Code § 3075(e))

Time for Filing a Protest

Protests involving warranty disputes are not subject to any specific statutory time limitations for filing. However, failure to file a protest within a reasonable time could result in a dealer losing the right to a hearing before the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code section 3075 is described in 13 CCR § 586. A protest involving warranty claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ¹⁹	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

¹⁹ See footnote 7.

Good Cause

Franchisee claims for warranty compensation shall not be disapproved except for good cause such as performance of non-warranty repairs, lack of material documentation, or fraud. (Veh. Code § 3075(e))

Determination of Protest

If a protest is filed, the Board shall determine whether the schedule or formula is reasonable, taking into account the dealer's labor rate to its retail customers. If there is a hearing, the franchisee has the burden of proving that the warranty reimbursement schedule is not reasonable, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material (Veh. Code § 3080(c)).

FRANCHISOR INCENTIVE PROGRAM CLAIMS - Motor Vehicle Dealers

Statutory Authority

Pursuant to Vehicle Code section 3065.1, all claims made by a new motor vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days after receipt by the franchisor.

Franchisor's Notice of Denial of Franchisor Incentive Program Reimbursement

Vehicle Code section 3065.1(a) requires that a franchisor who denies payment under the terms of a franchisor incentive program shall notify the franchisee within 30 days after receipt by the franchisor and provide specific grounds on which the disapproval was based.

Approval/Disapproval of Franchisor Incentive Program Reimbursement

Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code section 3065.1(f) provides that the failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of Article 4 (pertains to motor vehicles other than RVs).

Disapproval of Franchisor Incentive Program Claims

A franchisor shall not disapprove a claim unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. The claim is ineligible under the terms of the incentive program as previously communicated to the franchisee; or
4. Material noncompliance with documentation and administrative claims submission requirements if the requirements are reasonable and nondiscriminatory. (Veh. Code § 3065.1(b))

Protest of Initial Disapproval of Franchisor Incentive Program Claims

A franchisee can file a protest of the initial disapproval of a franchisor incentive program claim within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(e))

Franchisor Provided “Reasonable” Appeal Process

Vehicle Code section 3065.1(c) requires franchisors to provide a reasonable appeal process that allows the franchisee at least 30 days after receipt of the written disapproval notice to provide additional supporting documentation or information rebutting the disapproval.

If the disapproval is based upon noncompliance with documentation or administrative claims submission requirements, the franchisor shall allow the franchisee at least 30 days from the date of receipt of the disapproval notice to cure any material noncompliance.

If the disapproval is rebutted, and material noncompliance is cured before the applicable deadline, the franchisor shall approve the claim.

There are potentially two 30-day time periods: (1) reasonable appeal; and (2) opportunity to cure.

Final Denial of Franchisor Incentive Program Claim

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state “Final Denial” on the first page. (Veh. Code § 3065.1(d))

Protest of Final Denial of Franchisor Incentive Program Claim following a Franchisor’s Appeal Process

A franchisee can file a protest of the final denial of a franchisor incentive program claim following a franchisor’s appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(e))

Audits of Franchisee Incentive Program Records

Audits of franchisee incentive program records may be conducted by the franchisor on a reasonable basis, and for a period of 9 months after a claim is paid or a credit issued.

A franchisor shall not select a franchisee for an audit, or perform an audit, in a punitive, retaliatory, or unfairly discriminatory manner.

A franchisor may conduct no more than one random audit of a franchisee in a 9-month period.

The franchisor’s notification to the franchisee of any additional audit within a 9-month period shall be accompanied by written disclosure of the basis for that additional audit. (Veh. Code § 3065.1(g)(1))

Disapproval of Previously Approved Franchisor Incentive Program Claims

Previously approved claims shall not be disapproved or charged back to the dealer unless the claim meets one of the following categories:

1. False;
2. Fraudulent;
3. The claim is ineligible under the terms of the incentive program as previously communicated to the franchisee; or
4. Material noncompliance with documentation and administrative claims submission requirements if the requirements are reasonable and nondiscriminatory.

These are the same categories for initial disapproval of a franchisor incentive program claim. (Veh. Code § 3065.1(g)(2))

A franchisor shall not disapprove or chargeback a claim based upon an extrapolation from a sample of claims, unless the sample of claims is selected randomly, and the extrapolation is performed in a reasonable and statistically valid manner.

If the franchisor disapproves of a previously approved claim following an audit, within 30 days after the audit, the franchisor shall provide to the franchisee a written disapproval notice stating the specific grounds upon which the claim is disapproved. (Veh. Code § 3065.1(g)(3))

Protest of Franchisor Incentive Program Claim Disapproval of a Previously Approved Claim Following an Audit

A franchisee can file a protest of the franchisor incentive program claim disapproval of a previously approved claim following an audit within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(g)(6))

Franchisor Provided “Reasonable” Appeal Process

Vehicle Code section 3065.1(g)(3) requires franchisors to provide a reasonable appeal process that allows the franchisee a reasonable period of not less than 30 days after receipt of the written disapproval notice to respond to any disapproval with additional supporting documentation or information rebutting the disapproval and to cure any material noncompliance, with the period commensurate with the volume of claims under consideration.

If the franchisee rebuts any disapproval and cures any material noncompliance relating to a claim before the applicable deadline, the franchisor shall not chargeback the franchisee for that claim.

Final Denial of Franchisor Incentive Program Claim Following an Audit

If the franchisee provides additional supporting documentation or information purporting to rebut the disapproval, attempts to cure noncompliance relating to the claim, or otherwise appeals denial of the claim and the franchisor continues to deny the claim, the franchisor shall provide the franchisee with a written notification of the final denial within 30 days of completion of the appeal process, which shall conspicuously state “Final Denial” on the first page. (Veh. Code § 3065.1(g)(4))

Protest of Final Denial of Franchisor Incentive Program Claim Following an Audit Following the Franchisor’s Appeal Process

A franchisee can file a protest of the final denial of a franchisor incentive program claim following an audit following the franchisor’s appeal process within 6 months after receipt of the written notice. If there is a hearing, the franchisor has the burden of proof. (Veh. Code § 3065.1(g)(6))

Franchisor Chargeback for Franchisor Incentive Program Claims

Vehicle Code section 3065.1(g)(5) provides that the franchisor shall not chargeback the franchisee until 45 days after receipt of the written disapproval of a previously approved claim following an audit or final denial of a franchisor incentive program claim following an audit following the franchisor’s appeal process, whichever is later.

If the franchisee cures any material noncompliance relating to a claim, the franchisor shall not chargeback the dealer for that claim.

Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of receipt of that written notice.

If the Board sustains the chargeback or the protest is dismissed, the franchisor shall have 90 days following issuance of the final order or the dismissal to make the chargeback, unless otherwise provided in a settlement agreement.

If the franchisee files a protest pursuant to this subdivision prior to the franchisor’s chargeback for denied claims, the franchisor shall not offset or otherwise undertake to collect the chargeback until the Board issues a final order on the protest. (Veh. Code § 3065.1(g)(6))

In summary, days 45-90 are the only days to chargeback a dealer for franchisor incentive program claims. A manufacturer or distributor cannot chargeback a dealer before day 44, or after day 91. But if a protest is filed prior to a chargeback, then the franchisor cannot chargeback the dealer during the above time period. It must wait until the Board decides the protest and if the protest is dismissed or the Board sustains the chargeback, then the franchisor can chargeback the dealer but must do so within 90 days after the Board action (or within time period allowed by settlement agreement, if any).

However, if a false claim was submitted by a franchisee with the intent to defraud the franchisor, a longer period for an audit and any resulting chargeback may be permitted if the franchisor

obtains an order from the Board. (Veh. Code § 3065.1(h))

Required Elements of Protest

The required content of a protest under Vehicle Code section 3065.1 is described in 13 CCR § 586. A protest involving franchisor incentive program claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ²⁰	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall state either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

²⁰ See footnote 7.

FRANCHISOR INCENTIVE PROGRAM PROTESTS
Motor Vehicle Dealers

Vehicle Code Section	Type of Protest	Notice to Dealer	Time to File Protest	Burden of Proof if there is a Hearing
3065.1(a)	Initial Disapproval Initial disapproval of franchisor incentive program claims	Franchisor provides a written notice of disapproval within 30 days after the franchisor's receipt of a claim submitted by a franchisee.	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(d)	Final Denial/Post-Appeal Final denial of franchisor incentive program claim following a franchisor's appeal process	Written notice of Final Denial to the franchisee.	6 months from receipt of the written notice	Franchisor has the burden (3065.1(e))
3065.1(g)(3)	Post-Audit Franchisor incentive program claim disapproval of a previously approved claim following an audit	Franchisor provides a written notice of disapproval within 30 days after the audit stating the specific grounds.	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))
3065.1(g)(4)	Post-Audit/Post-Appeal/Final Denial Final denial of a franchisor incentive program claim following an audit following the franchisor's appeal process	Written notification of the Final Denial.	6 months after receipt of the written notice	Franchisor has the burden (3065.1(g)(6))

FRANCHISOR INCENTIVE PROGRAM CLAIMS - RV Dealers

Statutory Authority

Pursuant to Vehicle Code section 3076, all claims made by a recreational vehicle franchisee for payment under the terms of a franchisor incentive program shall be approved or disapproved within 30 days after receipt by the franchisor.

Franchisor's Notice of Denial of Franchisor Incentive Program Reimbursement

Vehicle Code section 3076(a) requires that a franchisor who denies payment under the terms of a franchisor incentive program, shall notify the franchisee within 30 days and provide specific grounds on which the disapproval was based.

Approval/Disapproval of Franchisor Incentive Program Reimbursement

Any claim not specifically disapproved in writing within 30 days from receipt shall be deemed approved on the 30th day. If incentive program compensation claims are approved, they must be paid within 30 days of approval. However, Vehicle Code section 3076(a) provides that the failure to approve or pay within the above specified time limits, in individual instances for reasons beyond the reasonable control of the franchisor, do not constitute a violation of Article 5, pertaining to RVs.

Audits of Franchisee Incentive Program Records

Vehicle Code section 3076(b) provides for audits of franchisee incentive program records if reasonable and for a period of 18 months after a claim is paid or a credit issued. Any chargeback to a franchisee for incentive program compensation shall be made within 90 days of completion of the audit. However, if a false claim was submitted by the franchisee with the intent to defraud the franchisor, a longer period for the audit and any resulting chargeback may be permitted if the franchisor obtains an order to that effect from the Board.

Time for Filing a Protest

Following the disapproval of a claim, a franchisee shall have one year from receipt of the notice of disapproval in which to appeal and file a protest with the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code section 3076 is described in 13 CCR § 586. A protest involving franchisor incentive program claims must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ²¹	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

Good Cause

Franchisee claims for incentive program compensation shall not be disapproved except for good cause, such as ineligibility under the terms of the incentive program, lack of material documentation, or fraud. (Veh. Code § 3076(b))

Determination of Protest

The franchisee has the burden of proof, but the franchisor has the burden of proof to establish that a franchisee acted with intent to defraud the franchisor when the issue is material (Veh. Code § 3080(c)).

²¹ See footnote 7.

LIMITATIONS ON CERTAIN FRANCHISOR ACTIONS
INCONSISTENT WITH EXISTING STANDARDS - Motor Vehicle Dealers

a. **Franchisor Performance Standards, Sales Objectives, or Programs for Measuring a Dealer's Sales, Service, or Customer Service Performance (Veh. Code § 3065.3(a))**

Vehicle Code section 3065.3(a) provides that “[n]o franchisor shall establish or maintain a performance standard, sales objective, or program for measuring a dealer’s sales, service, or customer service performance that is inconsistent with the standards set forth in subdivision (g) of Section 11713.13.”

Subdivision (g) of Vehicle Code section 11713.13 provides that:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

...

(g) (1) Establish or maintain a performance standard, sales objective, or program for measuring a dealer’s sales, service, or customer service performance that may materially affect the dealer, including, but not limited to, the dealer’s right to payment under any incentive or reimbursement program or establishment of working capital requirements, unless both of the following requirements are satisfied:

(A) The performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is reasonable in light of all existing circumstances, including, but not limited to, the following:

(i) Demographics in the dealer’s area of responsibility.

(ii) Geographical and market characteristics in the dealer’s area of responsibility.

(iii) The availability and allocation of vehicles and parts inventory.

(iv) Local and statewide economic circumstances.

(v) Historical sales, service, and customer service performance of the line-make within the dealer’s area of responsibility, including vehicle brand preferences of consumers in the dealer’s area of responsibility.

(B) Within 30 days after a request by the dealer, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate provides a written summary of the methodology and data used in establishing the performance standard, sales objective, or program for measuring dealership sales or service performance. The summary shall be in detail sufficient to permit the dealer to determine how the standard was established and applied to the dealer.

...

b. **Franchisor Allocation of Vehicles or Parts (Veh. Code § 3065.3(b))**

Vehicle Code section 3065.3(b) provides that “[n]o franchisor shall allocate vehicles or parts in a manner inconsistent with the standards set forth in subdivision (a) of Section 11713.3.”

Subdivision (a) of Vehicle Code section 11713.3 provides that:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

(a)(1) To refuse or fail to deliver in reasonable quantities and within a reasonable time after receipt of an order from a dealer having a franchise for the retail sale of a new vehicle sold or distributed by the manufacturer or distributor, a new vehicle or parts or accessories to new vehicles that are of a model offered by the manufacturer or distributor to other franchisees in this state of the same line-make, if the vehicle, parts, or accessories are publicly advertised as being available for delivery or actually being delivered in this state. This subdivision is not violated, however, if the failure is caused by acts or causes beyond the control of the manufacturer, manufacturer branch, distributor, or distributor branch.

(2) To fail to disclose to any franchisee, upon written request, the basis upon which new motor vehicles of the same line-make are allocated or distributed to franchisees in the state and the basis upon which the current allocation or distribution is being made or will be made to the franchisee.

. . .

c. **Franchisor's Imposition of a Facility or Equipment Policy (Veh. Code § 3065.3(c))**

Vehicle Code section 3065.3(c) provides that "[n]o franchisor shall impose a facility or equipment policy inconsistent with the standards set forth in subdivision (a), (b), (c), or (k) of Section 11713.13.

Vehicle Code section 11713.13 provides, in part, as follows:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

(a) Prevent, or attempt to prevent, by contract or otherwise, a dealer from acquiring, adding, or maintaining a sales or service operation for another line-make of motor vehicles at the same or expanded facility at which the dealer currently operates a dealership if the dealer complies with any reasonable facilities and capital requirements of the manufacturer or distributor.

(b) Require a dealer to establish or maintain exclusive facilities, personnel, or display space if the imposition of the requirement would be unreasonable in light of all existing circumstances, including economic conditions. . . .

(c) Require, by contract or otherwise, a dealer to make a material alteration, expansion, or addition to any dealership facility, unless the required alteration, expansion, or addition is reasonable in light of all existing circumstances, including economic conditions and advancements in vehicular technology. . . .

. . .

(k) (1) Implement a program or policy that coerces or requires the franchisee to install direct current fast charging stations, unless all of the following are satisfied: . . .

Time for Filing a Protest

There is no specific statutory time period in the Vehicle Code within which to file a Vehicle Code section 3065.3 protest. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code section 3065.3 is described in 13 CCR § 586.5. A protest must contain all of the following (see Appendix for sample Form A):

Content Requirements	Regulatory Authority
Must be in writing and be signed by a franchisee or its attorney. ²²	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586.5(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586.5(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586.5(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586.5(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

²² See footnote 7.

Determination of Protest

If there is a hearing, the franchisor has the burden of proof as follows: (Veh. Code § 3065.3(e)).

Vehicle Code	Type of Protest	Burden of Proof
3065.3(a)	Performance Standard	The franchisor has the burden of proof that it complied with Section 3065.3; i.e., its “performance standard, sales objective, or program for measuring a dealer’s sales, service, or customer service performance. . .” is not inconsistent with the standards set forth in subdivision (g) of Vehicle Code section 11713.13.
3065.3(b)	Allocation of Vehicles or Parts	The franchisor has the burden of proof that it complied with Section 3065.3; i.e., its allocation of vehicles or parts is not inconsistent with the standards set forth in subdivision (a) of Vehicle Code section 11713.3.
3065.3(c)	Imposition of Facility or Equipment Policy	The franchisor has the burden of proof that it complied with Section 3065.3; i.e., imposition of its facility or equipment policy is not inconsistent with the standards set forth in subdivisions (a), (b), (c), or (k) of Vehicle Code section 11713.13.

FRANCHISOR COMPETING WITH A DEALER - Motor Vehicle Dealers

Vehicle Code section 3065.3(d) provides that “[n]o franchisor shall compete with a dealer in violation of subdivision (o) of Section 11713.3.”

Subdivision (o) of Vehicle Code section 11713.3 provides that:

It is unlawful and a violation of this code for any manufacturer, manufacturer branch, distributor, or distributor branch licensed under this code to do, directly or indirectly through an affiliate, any of the following:

. . .

(o) (1) To compete with their franchisees in the sale, lease, or warranty service of new motor vehicles.

(2) A manufacturer, branch, or distributor, or an entity that controls or is controlled by a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

. . .

(4) In addition to the exceptions identified in paragraphs (2) and (3), a manufacturer, manufacturer branch, distributor, or distributor branch, or an affiliate thereof, shall not be deemed to be competing with their franchisees in any of the following limited circumstances:

. . .

Time for Filing a Protest

There is no specific statutory time period in the Vehicle Code within which to file a Vehicle Code section 3065.3 protest. Failure to file a protest within a reasonable time, however, could result in a dealer losing the right to a hearing by the Board.

Required Elements of Protest

The required content of a protest under Vehicle Code section 3065.3 is described in 13 CCR § 586.5. A protest must contain all of the following (see Appendix for sample Form A):

<u>Content Requirements</u>	<u>Regulatory Authority</u>
Must be in writing and be signed by a franchisee or its attorney. ²³	13 CCR § 583
Must set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.	13 CCR § 586.5(a)(1)
Must set forth the franchisee's mailing address and telephone number, and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence and notices to the franchisee shall thereafter be addressed to said address, if the dealer principal is presenting its own case, or to the address of the dealer's attorney or agent, if so represented.	13 CCR § 586.5(a)(3)
Shall indicate either that the franchisee does or does not desire to appear before the Board.	13 CCR § 586.5(a)(4)
Franchisee may submit, as exhibits to the protest, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the protest.	13 CCR § 586.5(a)(2)
Franchisee shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Franchisee shall serve a copy of the protest on the franchisor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 584 13 CCR § 551.24

Determination of Protest

If there is a hearing, the franchisor has the burden of proof that it complied with Vehicle Code section 3065.3; i.e., the franchisor is not competing with a dealer in violation of subdivision (o) of Vehicle Code section 11713.3. (Veh. Code § 3065.3(e)).

²³ See footnote 7.

HEARING PROCEDURES

Pre-Hearing Procedure

Upon receiving a protest, the Board shall institute hearing proceedings similar to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

Discovery

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Proc. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). Section 551.6 of the Board's regulations implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

The enactment of the Electronic Discovery Act (Assembly Bill 5, Stats. 2009, Ch. 5, "Act"), effective June 29, 2009, broadened the categories of discoverable materials (documents, tangible things, land or other property) by adding "electronically stored information" (ESI).

Effective January 1, 2013, sections of the Civil Discovery Act relating to ESI were amended in order to address several inconsistencies (Senate Bill 1574, Stats. 2012, Ch. 72). ESI is now included among the things under a witnesses control that the witness would be bound by law to produce pursuant to a subpoena. Additionally, when any method of discovery permits, compels, prevents, or limits the production, inspection, copying, testing, or sampling of documents or tangible things, the same method would also apply to ESI. In general, if a demand for production does not specify a form or forms for producing a type of ESI, the responding party would be required to produce the information in the form or forms in which it is ordinarily maintained or in a form that is reasonably usable, but need not produce the same ESI in more than one form.

Subpoenas

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2.

Section 551.2(b) of the Board's regulations specifically incorporates Code of Civil Procedure section 1985, et seq., excepting the provisions of subdivision (c) of section 1985. Section 1985.8 of the Code of Civil Procedure imposes additional requirements on the parties, (or the court, if necessary), to resolve ESI issues as to the form, burdens and expenses of production, shifting or allocation of costs, and issues arising from other characteristics of ESI. The Act requires the parties, or the court, to weigh various cost/benefit factors in light of the amount in controversy in the proceeding to shape and limit the scope and nature of requests to produce ESI.

Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a non-party witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b) and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a non-party, are issued by the Board in accordance with Code of Civil Procedure section 2016.010, et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b). (13 CCR § 551.2(c)) No affidavits are required. Counsel for the parties can issue notices of depositions to parties. (Code Civ. Proc. § 2025.010, et seq.) Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board but need to be enforced in the out-of-state court. (Code Civ. Proc. § 2026.010, et seq.)

Government Code section 11450.30 and 13 CCR § 551.2(e) permit a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the subpoena on the witness or deponent, a copy of the subpoena and executed proof of service shall be filed with the Board. (13 CCR § 551.2(d))

Summary of Board Action

All hearings on protests filed pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076, may be considered by the entire Board²⁴ or may, at its discretion be conducted by one of the Board's ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code sections 3066 and 3080. The Board on receiving a protest does the following:

²⁴ Board ALJs generally preside over merits hearings not the Board itself. (See footnote 6 pertaining to OAH and the discussion on page 6 pertaining to dealer member participation in Article 4 protests.) For new protests, the Board adopted a numerical designation system. The ALJ is assigned based on the last digit of the Protest No. If a Board ALJ is unavailable, OAH would preside. For existing protests, ALJs will continue to be assigned at the Hearing Readiness Conference using the Merit Hearings Judge Assignment Log on a rotational basis.

Step	Action
1	By order fix a time within sixty (60) days of the order and place of hearing. ²⁵
2	<p data-bbox="289 310 1409 415">Send a copy of the order to the franchisor, the protesting franchisee, and all individuals and groups that have requested notification by the Board of protests and decisions by the Board.</p> <ul data-bbox="329 457 1409 1077" style="list-style-type: none"> <li data-bbox="329 457 1409 562">• Except in the case of a franchisee who deals exclusively in motorcycles, the Board or its Executive Director may accelerate or postpone the date initially established for the hearing. <li data-bbox="329 604 1409 709">• For the purpose of accelerating or postponing the hearing date, good cause must be established and in no event may the rescheduled hearing date be more than 90 days after the Board's initial order. <li data-bbox="329 751 1409 898">• "Good cause" for accelerating or postponing a hearing includes, but is not limited to, the effects on, and any irreparable harm to, the parties or interested persons or groups if the request for a change in hearing date is not granted. <li data-bbox="329 940 1409 1077">• 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 will be granted except in extreme emergencies such as serious accident or death. (13 CCR § 592)
3	The Board or an ALJ designated by the Board presides over merits hearings on protests. ²⁶

Stipulation of Fact

A hearing initiated by the filing of a protest may be held in whole or in part on a stipulation of fact, which is essentially an agreement between the parties defining points that are not in contention, and other parts of the dispute that have been resolved. Stipulations are of value in that they tend to facilitate and expedite conflict resolution. (See 13 CCR § 587 for procedural details of stipulation of fact before the Board.)

Stipulated Decisions

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code sections 3066 and 3080 to resolve one or more issues raised by a protestant or petitioner before

²⁵ In practice, the parties stipulate to a date for the merits hearing and the Board issues the order of time and place of hearing approximately 45 days prior to the hearing. If OAH is assigned to preside over the merits hearing, the protest is transferred to OAH after the Hearing Readiness Conference and would go to hearing in about three months.

²⁶ See footnote 24.

the Board. If the Board adopts a stipulated decision and order to resolve a protest filed under Vehicle Code section 3060 or 3070, and the parties stipulate that good cause exists to terminate, a hearing requiring a determination of good cause will not be required. (Veh. Code § 3050.7(b))

Hearings Open to the Public; Protective Orders

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or 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. The motion shall clearly identify the relief sought; the facts, circumstances, and legal authority; and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

Failure to Appear at a Hearing

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 ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding. (13 CCR § 589)

Decision of the Board

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported. (Veh. Code § 3008; 13 CCR § 588)

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. If the Board fails to act within 30 days after the close of the hearing, within 30 days after the Board receives a proposed decision where the case is heard before an ALJ, or within a period which may be mutually agreed on by the parties, then the proposed action of the franchisor shall be deemed to be approved. (Veh. Code §§ 3067 and 3081)

Court Reporting and Transcripts of Board Proceedings

Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion. For all merits hearings and dispositive motions, reporting costs will be allocated as follows:

Circumstances	Reporting Costs including Appearance, Delivery Fees, and any other Costs	Transcript Fees for the Board and Office of Administrative Hearings (if applicable)
Hearings on the merits and dispositive motions ²⁷	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and Office of Administrative Hearings, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the Board and Office of Administrative Hearings, if applicable, with a certified copy of the transcript. Counsel are responsible for purchasing their own transcript(s), if desired.

²⁷ "Dispositive motions" are those that result in a final determination of the protest or petition before the Board.

PETITIONS

Statutory Authority for Petitions

Vehicle Code section 3050(b) provides for any person to petition the Board to “[c]onsider any matter concerning 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 pursuant to Chapter 4 (commencing with Section 11700) of Division 5 submitted by any person. . . .”

Subdivision (b)(2)(B) of Section 3050, in which the relief sought is adjudication, only pertains to petitions filed with the Board by any member of the public, including a consumer, or other person that is not applying for or holding a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch or representative pursuant to Chapter 4 (commencing with Section 11700) of Division 5. It is intended that, for the Board to have jurisdiction over a petition pursuant to this subdivision, the petitioner must have filed the petition or consent to the jurisdiction by the Board. This subdivision does not affect petitions filed by licensees nor does it affect respondents (see Vehicle Code section 3051 identifying the licensees within the Board’s jurisdiction).

Filing a Petition with the Board

A licensee or member of the public wishing to bring a dispute before the Board pursuant to Vehicle Code section 3050(b) is required to file a petition (see Appendix for sample Forms B1 and B2). The petition shall clearly identify the facts, legal authority, and relief sought and include declarations or other evidence or documents that support the petition. (13 CCR § 556)

In the past, petitions filed with the Board have alleged such things as the unreasonable refusal of a franchisor to approve a change in ownership, unreasonable refusal of a franchisor to approve a relocation, discrimination in allocation of products, failure to supply products authorized to be sold under the terms of the franchise, and other violations of the Vehicle Code. Such petitions requested a hearing before the Board and sought relief in the form of a Board order that required the respondent to either do, undo, or refrain from doing some action that caused harm to the licensee petitioner.

However, as a result of *Mazda Motor of America, Inc. v. California New Motor Vehicle Board; David J. Phillips Buick-Pontiac, Inc., Real Party in Interest* (2003) 110 Cal.App.4th 1451, the Board’s jurisdiction to hold hearings and issue such orders is now limited to petitioners who are members of the public under Vehicle Code section 3050(b)(2)(A). In all instances where licensees are the petitioners, the Board may only direct the Department to investigate or take licensing action against the respondent under Vehicle Code section 3050(b)(1) and (3).

In all circumstances, the petition shall be served on the respondent and proof of service filed with the Board.

Time for Filing a Petition

There are no specific statutory time limits in the Vehicle Code within which a petition must be filed, but failure to file the petition within a reasonable time after the occurrence of events giving rise to the basis for the petition could result in the Board refusing to take any action. The respondent shall file a written answer within 30 days of the date the petition is served on the respondent. By declaration, 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. (13 CCR § 558).

Petition Filing Fee

A filing fee of \$200, which should be in the form of a check, ~~or~~ money order ~~or an authorized credit card charge~~ payable to the New Motor Vehicle Board, must accompany the petition and answer. Either the ~~petitioner~~ ~~protestant~~ or respondent may submit a request for a fee waiver. The Executive Director, upon a showing of good cause, may waive the \$200 filing fee (13 CCR § 553.40). (Samples are available on the Board's website.)

Required Elements of Petition

The required content of a petition under Vehicle Code section 3050(b) is described in 13 CCR § 555 (see Appendix for sample Forms B1 and B2).

Content Requirements	Regulatory Authority
Must set forth in clear and concise language the nature of the matter, which the petitioner wishes the Board to consider.	13 CCR § 555
Must contain the petitioner's name, mailing address and telephone number; the name, mailing address and telephone number of the petitioner's attorney or authorized agent, if any; and the name and address of the licensee or applicant for license (respondent) whose activities or practices are in question. All correspondence and notices to the petitioner shall thereafter be addressed to petitioner's address, if the petitioner appears in person, or to the address of the petitioner's attorney or agent, if so represented.	13 CCR § 555(a)
Must include the names, residence addresses and business addresses of persons and the dates, places and specific actions or practices involved.	13 CCR § 555(b)
Shall include a concise recitation of applicable law and citation to the applicable statutes and authorities if the actions or practices described in the petition are alleged to be a violation of law.	13 CCR § 555(c)
For petitioners who are members of the public only, petitioner shall state if the petitioner desires that the Board mediate, arbitrate, or resolve a difference between the petitioner and respondent, and describe the relief sought.	13 CCR § 555(d)
Petitioner may submit, as exhibits to the petition, photographic, documentary, or similar physical evidence relevant to the matter with an appropriate description in the petition.	13 CCR § 555(e)
For petitioners who are members of the public only, petitioner shall set forth an estimate of the number of days required to complete the hearing.	13 CCR § 555(f)
For petitioners who are members of the public only, petitioner shall request a pre-hearing conference if one is desired.	13 CCR § 555(g)
Petitioner shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
Petitioner shall serve a copy of the petition on the respondent and proof of service shall accompany the petition submitted to the Board.	13 CCR § 555.1 13 CCR § 551.24

First Consideration

If the petitioner is a member of the public seeking relief under Vehicle Code section 3050(b)(2)(A), upon the filing of a petition with the Board, a copy shall be forwarded by the Executive Director of the Board to each Board member for consideration. Within 10 days of receipt of a copy of the petition, unless any member of the Board notifies the Executive Director of an objection, the Executive Director shall set the matter for a hearing.

Resolution of Petitions without a Hearing

If the petitioner is a licensee or member of the public seeking relief under Vehicle Code section 3050(b)(1) and/or (3), these petitions would not be submitted to the Board for first consideration, as the authority for first consideration (13 CCR § 557), limits first consideration to matters in which a hearing is sought, i.e., Vehicle Code section 3050(b)(2)(A) petitions. These petitions would be agendized for consideration of the relief requested by the petitioner at the next regularly scheduled meeting. Such petitions are not assigned to an ALJ and are not subject to the normal evidentiary hearing process. The Board members, at a noticed meeting, would hear from the parties by way of written and oral arguments, and consider granting the relief requested. After consideration, the public members of the Board shall take final action and issue a written order that either grants the appropriate relief pursuant to Vehicle Code section 3050(b)(1) or (b)(3), or orders the petition dismissed (13 CCR § 562(b), (d), and (e)). The public members of the Board may also request further briefing and/or the submission of further evidence and continue the matter to a later open meeting for consideration and final action.

Challenge to Presiding Officer

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request (13 CCR § 551.1). Further, 13 CCR § 551.12(b) entitles a party, excluding an intervenor, in a petition to one disqualification without cause (peremptory challenge) of the assigned merits ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the merits ALJ or 20 days prior to the date scheduled for commencement of the merits hearing, whichever is earlier (13 CCR § 551.12(b)(1)). In the event a Board ALJ is unavailable to preside over the merits hearing, an ALJ from the Office of Administrative Hearings will be assigned. A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes. Except for the convenience of the Board or for good cause shown, no merits hearing shall be continued by the filing of a peremptory challenge.

Motion for Intervention

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 to intervene in a pending petition subject to the conditions set forth in 13 CCR § 551.13.

Amicus Curiae Briefs

The Board, its Executive Director, or an ALJ may, in ~~his or her~~ **their** discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

Summary of Board Action

For petitions seeking relief under Vehicle Code section 3050(b)(1) and/or (3) brought by a franchisee, including RV franchisees, 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 petition. (Veh. Code § 3050(b)) For petitions brought by members of the public seeking Vehicle Code section 3050(b)(1) and/or (3) relief, all members of the Board may participate.

After considering this type of petition, the Board may do any one or any combination of the following:

- (1) Direct the Department to conduct an investigation and submit a written report;
- (2) Order 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 respondent; and/or
- (3) Order the petition dismissed, with or without prejudice.

As stated above, if the petitioner is a member of the public seeking relief under Vehicle Code section 3050(b)(2), the Board retains the authority to hear and/or mediate the matter.

Hearing Procedures

The Board's powers in relation to petitions are discretionary, and there is no automatic right to a hearing for a member of the public seeking relief under Vehicle Code section 3050(b)(2)(A). If the Board orders a hearing, the pre-hearing procedures are similar to those involving protests. For procedural details for hearings on petitions, see 13 CCR § 580.

Informal Mediation

Prior to a member of the public initiating a petition seeking relief under Vehicle Code section 3050(b)(2)(A), a party or parties may request the Board informally mediate the potential dispute, that is, the activities or practices of a licensee or applicant for a license that are in question (13 CCR §§ 551.14-551.17). If both parties consent to informal mediation, then a mutually agreeable date for the mediation is calendared. Each party files and serves a pre-mediation statement setting forth the facts, issues, and proposed resolution of the matter. The Board, its Executive Director, or an ALJ designated by the Board or its Executive Director preside over the informal mediation and may authorize discovery (other than interrogatories) as appropriate. Evidence in the form of declarations may also be considered. All communications, negotiations, and settlement discussions between the participants of an informal mediation are confidential. At any time during this process, either party may request that the informal mediation be converted to a formal petition.

Members of the Public in Relation to New Recreational Vehicle Transactions

Members of the public have all the rights and remedies available in disputes with licensees in new recreational vehicle transactions as they do in transactions with other types of new motor vehicles under the jurisdiction of the Board with one distinction. Vehicle Code section 3078(a) states:

If the board receives a complaint from a member of the public seeking a refund involving the sale or lease of, or a replacement of, a recreational vehicle, as defined in subdivision (a) of Section 18010 of the Health and Safety Code, from a recreational vehicle dealership, as defined in subdivision (d) of Section 3072, the board shall recommend that the complainant consult with the Department of Consumer Affairs.

Thus, if a member of the public specifically seeks a refund or a replacement of a new recreational vehicle, the Board shall recommend that the complaint be referred to the Department of Consumer affairs, rather than the Board. However, nothing precludes a member of the public from seeking help from the Board in resolving the dispute as is available for any other new motor vehicle purchaser.

JUDICIAL REVIEW

Appeal to Superior Court

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code sections 3068 and 3082 and local rules of court.

APPENDIX

Form A - Protest

Form B1 - Petition (Veh. Code § 3050(b)(2)(A))

Form B2 - Petition (Veh. Code § 3050(b)(1) or (b)(3))

SAMPLE FORM A -**PLEADING FORMAT OF PROTEST**

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left-hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing itself, office address or residence address, telephone number, and email address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a protest, the individual filing the protest is known as the "Protestant," whereas the individual responding would be the "Respondent."

- 1 _____ [name of attorney and state bar number, or name of party representing itself]
2 _____ [address]
3 _____ [telephone number, fax number and email address, if available]
4 _____ Attorney for [Protestant] or in pro per [if party representing itself]

Leave the upper right-hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Protest of)	
)	
12	NAME OF FRANCHISEE,	)	Protest No. PR-
)	
13	Protestant,	)	PROTEST
)	
14	v.	)	[Vehicle Code section 3060, 3062,
		)	3064, 3065, 3065.1, 3065.3, 3065.4, 3070,
15	NAME OF FRANCHISOR,	)	3072, 3074, 3075, and 3076]
		)	[Dates of the hearing and any future
16	Respondent.	)	pre-hearing or settlement
		)	conferences, if known]

Introduction:

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

20 Protestant, [NAME OF PARTY/DEALERSHIP NAME], files this protest under the
 21 provisions of the California Vehicle Code section [applicable code section] with
 22 reference to the following facts:

Body:

Using numbered paragraphs, state the allegations in a clear and chronological order.

- 23 1. Protestant is a new motor vehicle dealer selling [type of new motor vehicle or recreational vehicle] and is located at [address]. Protestant's telephone number is [telephone number].
2. Respondent distributes/manufacturers [type/model of product] and is the franchisor of Protestant.
3. Protestant is represented in this matter by [attorney/law firm], whose address and telephone number are [address and telephone number].
4. On or about [date of occurrence(s)], Protestant received from Respondent a notice that Respondent intends to [terminate/modify/relocate/establish] its existing franchise agreement effective [number of days] from Protestant's receipt of said notice. A copy of said letter is attached as Exhibit A.
5. Protestant generally denies each and every allegation contained in the written notice of [termination/modification/relocation/establishment].
6. Respondent does not have good cause to [terminate/modify/relocate/establish] the franchise by reason of the following facts:
 - (a) [Specific facts upon which Protestant bases the allegations].
7. Protestant and its attorneys of record desire to appear before the Board. The estimated length of hearing on this matter will take [number of days] to complete.
8. A Pre-Hearing Conference is requested.

Dated:

Signed:

SAMPLE FORM B1 - PLEADING FORMAT OF PETITION (Veh. Code § 3050(b)(2)(A))

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left-hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing self, office address or residence address, telephone number, and email address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1 _____ [name of attorney and state bar number, or name of party representing itself]

2 _____ [address]

3 _____ [telephone number, fax number and email address, if available]

4 _____ Attorney for [Petitioner] or in pro per [if party representing itself]

Leave the upper right-hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Petition of)	
)	
12	NAME OF INDIVIDUAL,	)	Petition No. P-
)	
13	Petitioner,)	
)	
14	v.	)	PETITION
		)	[Vehicle Code section 3050(b)(2)(A)]
15	NAME OF LICENSEE,)	
)	
16	Respondent.	)	[Dates of the hearing and any future
		)	pre-hearing or settlement
		)	conferences, if known]

20 [NAME OF INDIVIDUAL], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(b)(2)(A), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm, or representative).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (A hearing and relief available under Vehicle Code section 3050(b)(2)(A)).

Dated:

Signed:

Petition (Veh. Code § 3050(b)(2)(A))

SAMPLE FORM B2 - PLEADING FORMAT OF PETITION (Veh. Code § 3050(b)(1) or (3))

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings and notices with the New Motor Vehicle Board, see 13 CCR § 593.1, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left-hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing itself, office address or residence address, telephone number, and email address, if available. Single space this section. Skip one line then add which party is filing this document. In the case of a petition, the individual filing the petition is known as the "Petitioner," and the party responding would be the "Respondent."

1 _____ [name of attorney and state bar number, or name of party representing itself]

2 _____ [address]

3 _____ [telephone number, fax number and email address, if available]

4 _____ Attorney for [Petitioner] or in pro per [if party representing itself]

Leave the upper right-hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD

9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Petition of)	
)	
12	NAME OF INDIVIDUAL/LICENSEE,	)	Petition No. P-
)	
13	Petitioner,)	
)	
14	v.	)	PETITION
		)	[Vehicle Code section 3050(b)(1)]
15	NAME OF LICENSEE,	)	[Vehicle Code section 3050(b)(3)]
)	
16	Respondent.)	
)	

19 [NAME OF INDIVIDUAL/LICENSEE], petitions the New Motor Vehicle Board, pursuant to Vehicle Code section 3050(b), with reference to the following facts:

1. Petitioner is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California or is an individual and consumer of a new motor vehicle or vehicles in the State of California.
2. Respondent is, and at all times mentioned herein, a licensee of the Department of Motor Vehicles authorized to do business and doing business in the State of California.
3. Petitioner is represented in this matter by (name, address, and telephone number of law firm).
4. Petitioner's mailing address and telephone number are as follows:
5. Respondent's mailing address and telephone number are as follows:
6. (Outline the particulars of the dispute).
7. WHEREFORE, Petitioner prays as follows: (That the Board provides relief available under Vehicle Code section 3050(b)(1) and/or 3050(b)(3).)

Dated:

Signed:

Petition (Veh. Code § 3050(b)(1) or (3))



Memorandum

Date : FEBRUARY 3, 2025

To : BOARD DEVELOPMENT COMMITTEE
KATHRYN E. DOI, CHAIR
BRADY SCHMIDT, MEMBER

From : TIMOTHY M. CORCORAN

Subject : UPDATE ON BOARD ACTIVITIES

In an effort to have on-going discussions regarding Board Member education and activities of interest, the Board Development Committee suggested agendaizing this topic at each Board Meeting to get input from the members. Additionally, education on topics of interest are scheduled for most General Meetings.

The Board education planned for the February 28, 2025, General Meeting is a tour of Fresno City College's West Fresno Center Automotive Technology program and facilities.

Educational presentations will be agendaized for each Board Meeting. Board Members can advise staff of any topics they wish to receive more information or training, which will be added to the following list:

- Presentation from dealer and manufacturer attorneys on common disputes between, and differing perspectives of, franchisees and their franchisors.
- Presentation on industry strategies to assure ZEV profitability, by dealer and manufacturer representatives.
- Presentation on implementation of alternative fuel vehicles in mass transit.
- Presentations highlighting local efforts to make communities ZEV-ready.
- Topics on Board procedure, including:
 - Writs of Administrative Mandate.
 - Stipulated Decisions and Orders.
 - Dealer Member Participation.
 - Foundational Board published cases and their common application.
 - Petitions.
 - Case management procedures:

Update on Board Development Activities

Page 2

February 3, 2025

- Paths a protest can take (law and motion, settlement, merits hearing).
- Types of protests and the various burdens of proof.
- Role of the statutorily required notices and time to file a protest.
- Protests that do not require a notice.

The information in this memorandum is provided for informational purposes only at the February 3, 2025, General Meeting. No Board action is required.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774.

cc: Ardy Kassakhian, President



Memorandum

Date : FEBRUARY 7, 2025

**To : BOARD DEVELOPMENT COMMITTEE
KATHRYN ELLEN DOI, CHAIR
BRADY SCHMIDT, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE
ADMINISTRATIVE PROCEDURE ACT AND BAGLEY-KEENE OPEN
MEETING ACT**

Attached are detailed summaries of the Administrative Procedure Act and Bagley-Keene Open Meeting Act that encompass changes effective January 1, 2025. All substantive changes in the summaries are highlighted yellow in underline and strikeout font.

A brief summary of the acts and changes are as follows:

Administrative Procedure Act

The Administrative Procedure Act ("APA"), Government Code section¹ 11340, et seq., is the basic law controlling administrative agencies in California. The APA consists of three chapters of the Government Code. Chapter 3.5 (Gov. Code §§ 11340-11361) establishes the Office of Administrative Law and sets forth the law covering the quasi-legislative function of administrative agencies, i.e., the promulgation of regulations. When the Board elects to amend, adopt, or repeal regulations, it does so in compliance with Chapter 3.5.

Chapter 4.5 (Gov. Code §§ 11400-11475.70) applies to any adjudicative proceeding required to be conducted under Chapter 5 (Gov. Code §§ 11500-11529). These statutes are the basic authority or "rules of procedure" governing administrative quasi-judicial proceedings. They govern administrative hearing procedures unless the statutes relating to a specific agency's proceedings provide otherwise. (Gov. Code §§ 11410.50, 11415.10, and 11415.20)

The Board's specific authority to conduct administrative hearings is found in Vehicle Code section 3000, et seq. and in the Board's regulations in Title 13 of the California Code of Regulations ("Board's Regulations"), section 550, et seq. Specific Board procedures set forth with particularity in the Vehicle Code and the Board's Regulations are controlling over the APA. Also, Vehicle Code sections 3066(a), 3080(a), and 3085.2(a) expressly incorporate Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514,

¹ All statutory references are to the Government Code.

11515, and 11517 into Board procedures for hearings on protests only. No provisions in the Vehicle Code or the Board's Regulations exempt the Board from the APA. Any provisions of the APA not in conflict or inconsistent would supplement the Vehicle Code and the Board's Regulations. To the extent it is subject to the APA, the Board is in compliance with all applicable provisions.

There were no legislative changes to the APA effective January 1, 2025. Additionally, there were no regulatory or procedural changes so the attached summary is identical to the version provided in 2024.

The Bagley-Keene Open Meeting Act

The Bagley-Keene Open Meeting Act ("Act"), at Government Code section 11120 -11132, is one of the "sunshine laws" that ensures citizens have knowledge of the activities and workings of government. A democratic government assumes that those who elect public officials will have free access to what those public officials are doing. Access to government meetings and records provides citizens with the information they need to participate in the democratic process and to insist that government officials are held accountable for their actions. The best way to emphasize the intent of open meeting laws is to set forth the first section of the Act as follows:

- It is the public policy of this state that public agencies exist to aid in the conduct of the people's business and the proceedings of public agencies be conducted openly so that the public may remain informed.
- In enacting this article, the Legislature finds and declares that it is the intent of the law that actions of state agencies be taken openly and that their deliberation be conducted openly.
- The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. (Gov. Code § 11120)

There were no legislative changes to the Bagley-Keene Open Meeting Act impacting the Board. Government Code section 11126 (pertaining to closed sessions) was amended effective January 1, 2025, authorizing the California Earthquake Authority to hold a closed session as specified.

The attached summary reflects gender specific language being replaced with gender neutral language on page 3 in the "Conditions on Attendance" section.

In April 2024, the California Department of Justice updated its 2024 *Bagley-Keene Open Meeting Act Guide*. The updated Guide includes citations to relevant case law and formal Attorney General opinions, and is available at [2024 Bagley-Keene Act Open Meeting Act Guide](#). This version incorporates the new provisions pertaining to teleconference meetings.

This matter is for information only at the February 28, 2025, General Meeting.

If you have any question or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



Memorandum

Date : February 5, 2025

To : BOARD DEVELOPMENT COMMITTEE
KATHRYN ELLEN DOI, CHAIR
BRADY SCHMIDT, MEMBER

From : TIMOTHY M. CORCORAN
JASON A. ROSE

Subject : BOARD MEMBER EDUCATION CONCERNING CHANGES TO THE POLITICAL REFORM ACT AND PUBLIC RECORDS ACT

Below are brief summaries of the Political Reform Act and Public Records Act that encompass changes that are of interest to the New Motor Vehicle Board effective after January 1, 2025¹ and recent legal opinions:

The Political Reform Act

The Political Reform Act ("PRA"), Government Code² section 81000, et seq., is the basic ethics law in California. Although a significant focus of the PRA is on campaign financing, election committees and lobbying, the main purpose of the PRA, in relation to the Board's operations, is to ensure that Board decisions are made fairly without regard to who is affected by those decisions. The PRA provides that Board members and staff are required to publicly disclose their financial interests in entities specified in the Board's conflict of interest regulation (Form 700 or Statement of Economic Interests) and to refrain from participating in decisions in which there is such an interest.

At the outset, please note that the Fair Political Practices Commission ("FPPC") releases publications concerning the most recent amendments to the PRA and a "State" factsheet entitled "Limitations and Restrictions on Gifts, Honoraria, Travel, and Loans." At this time, these updated publications have not yet been released. We will provide an updated memorandum and PRA Summary upon receipt of these publications.

For 2025, the following relevant changes were made:

1. Effective January 1, 2025 - December 31, 2026, the gift limit will increase from \$590 to \$630. State and local officials and employees are prohibited from receiving a gift or gifts totaling more than \$630 in a calendar year from certain sources. This gift limit is adjusted for inflation every odd-numbered year.

¹ At the March 30, 2022, General Meeting, the Board Members requested that resource materials be provided only upon request and not be included in the Board Meeting materials.

² All statutory references are to the Government Code.

2. Effective January 1, 2025, Assembly Bill 1170 (Assemblymember Valencia, Chapter 211, Stats. 2024) amended Section 87500. The FPPC will no longer accept paper filing from officials who must disclose financial interests directly to the FPPC. Appointed members and public officials must file their Statement of Economic Interests (Form 700) via the Commission's Electronic Filing Portal.

Public Records Act

The California Public Records Act ("CPRA"), Government Code section 7920.000 et seq., was reorganized and recodified, effective January 1, 2022. The changes became operative on January 1, 2023. There were no substantive changes made to the CPRA when it was reorganized.

The CPRA provides public access to state and local government information. It is the other major "sunshine law" that ensures citizens have knowledge of the activities and workings of government. The policy supporting the CPRA is expressed by the legislative intent of the law as follows: "the Legislature . . . finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code § 7921.000)

The CPRA favors disclosure unless there is a specific reason not to, which is usually based on confidentiality and privacy considerations. These reasons, set forth as specific statutory exemptions, have been interpreted and evaluated by the courts over the years. Nondisclosure can also be justified if it can be established that the public interest in nondisclosure outweighs the public interest in disclosure. The state policy favoring disclosure was emphasized with the passage of Proposition 59, which states in part as follows: "A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access."

The substantive relevant changes to the Public Records Act are as follows:

Effective January 1, 2025, Senate Bill 1034 (Senator Padilla, Ch. 161, Stats. 2024) amended Section 7922.535 to revise the "unusual circumstances" under which the time limit to produce records may be extended to include the need to search for, collect, and appropriately examine records during a state of emergency, as defined, proclaimed by the Governor in the jurisdiction where the agency is located.

In addition, relevant case law has also recently held the following:

1. There are potential pitfalls for a requester who fails to work with the local agency. The plaintiff advised that there were numerous documents which the city failed to produce in response to his request. In response, the city requested identification of the other records that are responsive. The Court held that the city's last word to the Plaintiff about his first request was not an unequivocal claim that the city had not retained the requested documents. Instead, the city asked the Plaintiff for guidance after he claimed its initial search failed to produce all responsive records, which suggested it

was willing to take another look. ... it was [the Plaintiff] who ended the dialogue, not the city. (*Valenti v. City of San Diego* (2023) 94 Cal. App. 5th 218.)

2. This case involved the Governor's former senior advisor for energy and a request for calendar entries with 10 specific entities. The Court found the request, "sufficiently specific, focused, and limited, and the public interest in disclosure sufficiently compelling when measured against the minimal impact on government decision making, to override the deliberative process privilege." (*State v. Superior Court* (2024) 101 Cal. App. 5th 214.)

If you have any questions or comments, please contact me or Jason at (916) 505-2114. This matter is being agendized for information only at the February 28, 2025, General Meeting.

cc: Ardy Kassakhian, President



Memorandum

Date : FEBRUARY 3, 2025

**To : EXECUTIVE COMMITTEE
ARDASHES "ARDY" KASSAKHIAN, CHAIR
JACOB STEVENS, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : UPDATE CONCERNING THE BOARD'S COMPLIANCE WITH THE 1996
PERFORMANCE AUDIT CONDUCTED BY BUSINESS, TRANSPORTATION &
HOUSING AGENCY, AND THE RESULTANT CORRECTIVE ACTION PLAN**

The legal staff¹ annually reviews the Board's compliance with the 1996 Performance Audit conducted by Business, Transportation & Housing Agency² ("Agency") and the resulting Corrective Action Plan. At the May 26, 2011, General Meeting, the members made this an exception report. Most recently the members reviewed the Audit at the September 21, 2023, General Meeting. There have been several updates, so this matter is being agendized for informational purposes at the February 28, 2025, General Meeting.

The attached updated matrix provides an overview of each audit finding, the chronology of each step taken toward Board compliance, and the Department of Motor Vehicles' responses. It further encompasses the Corrective Action Plan Committee's proposal that was adopted by the Board at its December 8, 1998, General Meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions that were adopted at the May 25, 2000, General Meeting. The updates are highlighted yellow in underline and strikeout font.

¹ At the November 20, 2008, General Meeting, the Audit Compliance Officer duties were assigned to the Board's General Counsel. However, given the General Counsel's resignation in 2011, Robin Parker assumed these duties.

² Effective July 1, 2013, California State Transportation Agency superseded Business, Transportation & Housing Agency.

The chart below provides a brief summary of the updates to the corrective action plan taken by the Board:

Finding No.	Description	Update
14	The Board should ensure that all required transaction reports are filed with the Agency.	Reference to the Senior Staff Counsel position providing the Week Ahead Report has been deleted. This allows flexibility in which member of the team submits this report.
15	Board delegations are not formalized.	Reflects updates to the Board adopted delegations.
28(29)	Designation of economic conflict-of-interest filing officials is incomplete.	Amendments are in process to reflect the new Assistant Division Chief/ Program Manager position (Assistant Director and Equity Officer.)
30(31)	Board staff do not have access to written guidance on appropriate behavior.	All staff have access to written guidance on appropriate behavior via the DMV Driver and the DMV Expectations document. Additional language is added that these documents are also provided to staff.

This matter is for information only at the February 28, 2025, General Meeting. If you have any questions or require additional information, please do not hesitate to contact me at (916) 244-6774 or Robin at (916) 244-6776.

Attachment

Business, Transportation & Housing Agency¹ Performance Audit of the New Motor Vehicle Board

Audit Finding: 1

The Board does not have statutory authority or budgeted resources to establish a “Lemon Law” consumer protection legal services program.

Audit Recommendation

Settlement and arbitration services to individual Lemon Law related consumers is potentially a very large program. If the Board’s plans include expanding into this program area, we recommend that the Board develop its workload indicators and prepare appropriate budget and policy documents to assure that the proposed activities are in coordination with policies of the Agency, the DMV, which has jurisdiction over licensing of dealers, and Department of Consumer Affairs, which has jurisdiction over certifying the manufacturer’s arbitration program.

NMVB Response

The Board concurs. The Board has not in the past, and does not now have, any intention or interest in regard to establishing a “Lemon Law” consumer protection legal services program. However, the Board provides voluntary consumer mediation service for the benefit of any consumer who has a dispute with a new motor vehicle dealer, manufacturer, or distributor. This mediation service is not related specifically to Lemon Law matters. This service, for which there is no charge to the parties, is provided in order to comply with the legislative mandate of California Vehicle Code section 3050(c)(2).

NOTE: The Board has continued to enhance and improve the services offered by its Consumer Mediation Services Program without exceeding the guidelines established by the Corrective Action Plan Committee. It improved the complaint form which has been renamed the Mediation Request Form, which is available on the Board’s website or by calling the Board’s offices. The staff will continue informal mediation and direct consumers to the Lemon-Aid pamphlet on the Department of Consumer Affairs website. Specific “Lemon Law” complaints are referred to the Department of Consumer Affairs. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The members are provided an annual update on the Consumer Mediation Program at a noticed meeting in January.

DMV’s Response

All programs will be reviewed to assure proper policy and budgetary approval.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The Board does not plan to expand its informal mediation program into a “Lemon Law” program.

DMV’s Response to CAP

The response indicates an intent to continue the Consumer Newsletter, which provides information on the Lemon Law and advises the consumer as to the existence of the Board and its informal mediation program. The Newsletter and the mediation program appear to be beyond any authority conferred on the Board by statute and should be discontinued. The Board serves as a referral function.

Date Completed

February 1997

CAP Committee Proposal

The Board staff will continue informal mediation and will send out the Lemon-Aid pamphlet prepared by the Department of Consumer Affairs. It will not advertise its services nor will any type of consumer newsletter be disseminated.

¹ All references to Agency refer to Business, Transportation & Housing Agency or California State Transportation Agency (7/1/13).

Audit Finding: 2

Duty Statements of the principal administrative officials are not in conformance with the provisions of the “new” Administrative Procedure Act.

Audit Recommendation

The Board should determine a method of organizing duties which is compatible with the requirements of the Administrative Procedure Act. The Board should work in conjunction with the Department to ensure that any resulting personnel changes follow requirements.

NMVB Response

The Board concurs. The Board President and Executive Secretary have discussed with a representative from Agency the changes necessary for the Board to be in conformance with the “new” Administrative Procedure Act when the Act becomes effective July 1, 1997. NOTE: Duty Statements for the principal administrative officers are in conformance with existing law, and operate with a written Duty Statement for the Executive Secretary that has been in existence since April of 1981, as well as a written Duty Statement for the Assistant Executive Secretary that has been in existence since January 1987.

NOTE: At the May 25, 2000, General meeting of the Board, the members adopted the Audit Review Committee’s recommendation that the Board’s organization structure and duties of the Executive Secretary and Assistant Executive Secretary be redefined to eliminate all duties related to hearing Board cases. The Executive Secretary position would be recast as the Board’s Executive Director, with responsibility for all administrative and statutory functions of the Board, including processing cases filed with the Board and conducting informal mediation designed to efficiently and expeditiously settle disputes whenever possible. This would include all statutory responsibilities of the Board’s “secretary.” The Assistant Executive Secretary duties would be changed to that of General Counsel, eliminating any involvement in hearing specific cases. The General Counsel would analyze proposed decisions and rulings and advise the Board thereon. Additionally, the General Counsel would advise the Executive Director and the Board on all other legal matters of interest to the Board. These positions would be designated as Career Executive Assignment. On December 12, 2000, Tom Novi was appointed to the position of Executive Director until he retired in 2005. Howard Weinberg was appointed to the position of General Counsel on January 8, 2002. Mr. Weinberg resigned in February 2010. The Office of the Attorney General is serving in this capacity on an as needed basis. In 2003, the Board sponsored legislation that changed references to “Executive Director” from “secretary” to reflect the current organizational structure and duties of the Board staff and administration. Vehicle Code section 3014 was amended to remove any reference to Assistant Executive Secretary and changed the Executive Director position from a civil service to exempt position. These statutes were effective on January 1, 2004. The Board also promulgated regulations to reflect these changes that were effective on January 1, 2004. On September 8, 2005, the Board appointed William G. Brennan as Executive Director. The Board also promulgated a regulation that deleted the authority of the Executive Director to conduct protest hearings (operative April 23, 2006). Mr. Brennan passed away in November 2017 and Timothy M. Corcoran was appointed as the Executive Director on January 24, 2018.

DMV’s Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The separation of power provisions of the “new” APA are not applicable to the Executive Secretary/Chief Administrative Law Judge.

DMV’s Response to CAP

The duty statements are not sufficiently delineated to ensure the separation of functions will occur. Duty statements/functions should be outlined to clearly show that no conflicts will be created or the appearance of a conflict. The mandates of the “new” APA do apply to the Board and its staff.

Date Completed

May 2000

CAP Committee Proposal

At the January 22, 1998, General meeting of the Board, the members adopted a numerical designation for assigning hearing officers. The Executive Secretary and Assistant Executive Secretary may preside over a settlement conference by mutual consent of the parties but they are not given a numerical designation and therefore are not assigned cases.

Audit Finding: 3

The Board may not provide all due process protections of the “new” Administrative Procedure Act.

Audit Recommendation

The Board should review its processes to assure compliance with the additional protections required by the Administrative Procedure Act.

NMVB Response

The Board concurs. The Board President and Executive Secretary have met with a representative from Agency to discuss changes that may be necessary for the Board to be in conformance with the “new” Administrative Procedure Act when the Act becomes effective July 1, 1997.

NOTE: The legal staff annually reviews the legislative changes to the APA to ensure Board procedures are in compliance and provides a staff analysis to the Board Administrative Law Judges.

DMV’s Response

Departmental legal staff will be available for consultation with the “new” Administrative Procedure Act. Staff will review the advantages and disadvantages of referring Board protest hearings to the office of Administrative Hearings and will discuss this option with the Board. If hearings remain within the Board, comprehensive regulations will be developed along with staff reorganization. Privatization will also be explored, given the number of arbitration services available.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Board staff analyzed the Act, and have implemented efforts to ensure compliance.

DMV’s Response to CAP

The Board’s analysis of the “new” APA is superficial and incomplete. No contact has been made by Board staff with DMV Legal Office for assistance in complying with the mandates.

Date Completed

September 1998

CAP Committee Proposal

On September 23, 1998, Tom Flesh, Fritz Hitchcock and Robin Parker met with then DMV Director, Sally Reed, then Chief Counsel, Marilyn Schaff, and then Assistant Chief Counsel, Madeline Rule concerning the Board’s compliance with the APA. Based upon Departmental input, the Corrective Action Plan Committee determined that the Board was in compliance with the “new” APA.

Audit Finding: 4

The Board staff did not seek prior approval for filing amicus curiae briefs with the Courts.

Audit Recommendation

During the field work of the audit, the Board began requesting approval for filings. The Board should continue to remain in compliance and should review its procedures for using the amicus curiae process as a legal and policy strategy.

NMVB Response

The Board concurred, with a formal policy relating to filing of amicus curiae briefs developed and approved at the July 12, 1996, General meeting. The Board's policy is that the Board will not file any amicus briefs without the consent of Agency. As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board decides at a subsequent meeting not to file the amicus brief, the request for consent will be withdrawn.

NOTE: On March 9, 2011, the Board filed an amicus curiae letter in support of Yamaha's petition for review in the California Supreme Court in *Powerhouse Motorsports Group, Inc. and Timothy L. Pilg v. Yamaha Motor Corp, Inc.; Powerhouse Motorsports, Petitioner v. New Motor Vehicle Board, Respondent; Yamaha Motor Corp, Inc., Real Party in Interest*. In compliance with this policy, the necessary approvals from the Board Vice President, the Public Members (since this matter involves a dispute between a franchisee and franchisor), Agency, and the Governor's Office were received. It was reported to the full Board at its March 29, 2011, General Meeting. Agency is not the final decision maker for the filing of amicus briefs, rather after Agency review, the filing such briefs must be approved by the Governor's Office of Legal Affairs.

DMV's Response

None.

Current Status

As a result of the Corrective Action implemented the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV's Response to CAP

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 5

The New Motor Vehicle Board does not comply with established policy and law pertaining to legal representation.

Audit Recommendation

The Board should seek written consent from the Attorney General's Office for each specific case or should seek a general consent before employing legal counsel other than Attorney General's staff for judicial proceedings. Finally, the Board should adopt policies for determination of whether to request permission to participate in judicial proceedings. The policy should include provisions for a discussion by the Board of the merits of the action.

NMVB Response

The Board concurred and is taking decisive action to adopt policies and procedures so that all legal representation is in full compliance. These actions include, but are not limited to, increased Board participation in policies and procedures, the formation of a Judicial Policies and Procedures Committee of the Board, and a series of meetings that have occurred with the Board President and high level officials within the Office of the Attorney General. Each of the Audit Recommendations is being incorporated into these discussions and subsequent policies and procedures. It should be noted that the officials within the Office of the Attorney General have been very helpful in formulating policies and procedures that are conducive to quality legal representation within limited budget levels.

NOTE: Discussion of a Board Designee by the President consistent with this policy was considered at the June 26, 2008, General meeting. As a result, the Board decided that it is only those matters in which the Dealer Member would be disqualified from having heard in the first place that are being delegated. Further, if a Dealer Member is Board President, and a Public Member is Vice President, then the delegation should automatically go to the Vice President. All judicial matters are monitored by the Board legal staff whether it is represented or not, and the status of each case is reported on the Executive Director's Report at each General Board meeting.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

On October 22, 1996, the Board adopted a policy entitled Board Policy Regarding Representation in Court Actions. On March 18, 1997, the Board revised this policy. All pending court matters are reviewed by the Board President or his designee for the ultimate determination of whether an important State interest/issue is implicated and whether it will participate in the litigation via the Attorney General's Office. Unless an important State issue is implicated, the Board notifies the parties of its policy not to appear in mandamus actions, and further requests that the Court keep it on the proof of service list. If the Court requests the Board's participation, it would retain the services of the Attorney General's Office.

DMV's Response to CAP

Date Completed

March 1997

CAP Committee Proposal

Audit Finding: 6

The amount of time devoted to hearing cases may be insufficient to allow for full consideration of all issues.

Audit Recommendation

The Board should review its hearing process to ensure that all Board members understand the policy guidelines used for selection of information presented to them and feel they have sufficient time and information from which to make appropriate decisions.

NMVB Response

The Board concurs. A high degree of importance has already been focused on the method of placing an item on the agenda, advance availability of materials, and adequate consideration of matters. The Board members are enthusiastically embracing more active participation. At the July 12, 1996, meeting, Board members addressed a lengthy agenda. There was active participation by the various members many of whom expressed a desire to continue working despite the passage of considerable time.

NOTE: The Board continues to place a high level of importance on making materials available to Board members and allowing sufficient time to discuss issues at noticed meetings. The staff provides a website link to the Board meeting materials to all members and upon request mails a binder that is tabbed according to the agenda at least 10 days in advance of an upcoming meeting. In general, committee memorandums are disseminated to the appropriate members and blind courtesy copied to the Board President in advance of the materials mailing. Feedback is solicited from the committee members prior to finalizing the memo for dissemination to the full Board.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The Board now places a high level of importance on making materials available and having sufficient time to discuss issues.

DMV's Response to CAP

The Board's response to this finding is non-responsive and includes no corrective action plan.

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 7

The Board should adopt parliamentary procedures.

Audit Recommendation

The Board should adopt the parliamentary procedures which fit its needs and should appoint a recording secretary to be responsible to assure that minutes are complete and timely prepared.

NMVB Response

The Board concurs. Board members were given a copy of Robert's Rules of Order to review at the August 20, 1996, meeting. The issue was discussed, and staff was instructed to prepare a presentation to the Board members, at a subsequent meeting, concerning which provisions of Robert's Rules of Order should be adopted by the Board or, in the alternative, some other parliamentary procedure.

NOTE: New members are provided with the Board adopted Parliamentary Procedures. Periodically, on an as-needed basis this topic is agendaized for Board member review.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

At its March 18, 1997, General meeting, the members adopted Board Parliamentary Procedures.

DMV's Response to CAP

The Board cannot just adopt "parliamentary rules" at a meeting of the Board; such rules must be properly adopted as administrative regulations, in accordance with the APA.

Date Completed

October 1997

CAP Committee Proposal

On October 14, 1998, Robin Parker met with Madeline Rule, then Assistant Chief Counsel, DMV. Ms. Rule indicated that the Parliamentary Rules overlapped with other statutes and dealt primarily with internal Board procedures. The Parliamentary Rules did not require to be promulgated as rulemaking.

Audit Finding: 8

Board may not always be in compliance with the Bagley-Keene Open Meeting Act.

Audit Recommendation

The Board should consider an education program which includes inviting an experienced presenter to cover the requirements of the Act and to describe the risks and typical mistakes which are made by quasi-judicial state entities such as this Board.

NMVB Response

The Board concurs. The Bagley-Keene Open Meeting Act and how it applies to meetings of the Board was a specific agenda item at the July 12, 1996, General meeting. The President and the Executive Secretary gave a detailed presentation to the members of the Board regarding the Act, including notice and agenda requirements, limitations and requirements of advisory committees, factors which are considered in determining what constitutes a “meeting”, as well as the prohibition against “serial” or “hub” meetings. In addition, the members of the Board have been provided with the booklet entitled Open Meeting Laws, published in 1989 by the California Attorney General’s Office together with the 1995 supplement. Further, the Executive Secretary is designated to be the Bagley-Keene Compliance Officer with responsibility for Board member education and compliance.

NOTE: The General Counsel is now the Bagley-Keene Compliance Officer² and is responsible for ensuring compliance with the Act in addition to providing guidance, legal opinion, and education to the members and staff. The members are provided an annual update of the Open Meeting Act and a staff analysis. Continuous education on this topic is provided to the members and has been a noticed agenda item on many occasions.

DMV’s Response

None.

Current Status

As a result of corrective action already implemented the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV’s Response to CAP

Date Completed

July 1996

CAP Committee Proposal

² Robin Parker, Chief Counsel, is performing all of the duties previously assigned to the Board’s General Counsel including the Bagley-Keene Compliance Officer.

Audit Finding: 9

The Department and the Board should develop an issue memo for Reorganization.

Audit Recommendation

The Board should meet with Agency and the Department to explore organization alternatives which would provide the best and most efficient resolution of manufacturer and dealer disputes.

NMVB Response

The Board concurs. This matter was discussed by the Board at its General meeting of August 20, 1996. The Board is in the process of preparing the recommended issue memorandum.

NOTE: At its May 25, 2000, General meeting, the members of the Board adopted the Audit Review Committee's recommendation that Board cases should be heard by the Board's Administrative Law Judges. At the January 25, 2023, General Meeting, the Office of Administrative Hearings ("OAH") was added to the Board's "Merit Hearings Judge Assignment Log," so OAH is next in line to preside over a protest hearing between a franchisee and franchisor. For a period not to exceed three years, the Executive Director has discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director will seek Executive Committee permission. (April 28, 2023, General Meeting)

See Audit Finding 2 for discussion concerning the Board's reorganization of its senior management positions.

DMV's Response

The Director concurs with the recommendation that the Board and the Department meet with Agency to explore organization alternatives. These discussions should include consideration of the primary benefits offered by the Board, the importance of the appellate function to these benefits, and consideration of limiting the appellate function to new vehicle transactions. Further, the report suggests that some functions may be duplicated by both the Department and the Board. Once an organizational structure is determined along with the development of the restructure, duplicative functions will be consolidated or eliminated in the most cost-effective and efficient manner. A more detailed review of comparable Boards in similar states may offer some alternatives to consider for implementation to the Board.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The Board is to meet with DMV, BT&H Agency and other state agencies to explore organizational alternatives and will prepare an issue paper for reorganization.

DMV's Response to CAP

Corrective action is different from the Department's proposal. Some are similar but the Board appears to be taking an independent course, not entirely consistent with the Director.

Date Completed

May 2000

CAP Committee Proposal

After the Corrective Action Plan Committee reviewed the option of referring all matters to the Office of Administrative Hearings, it determined that the present system as modified with several proposed recommendations would be more efficient, cost effective, and would afford the parties an effective means to resolve disputes.

Audit Finding: 10

The Board should consider referring its consumer inquiries to departments with primary jurisdiction and adequate resources.

Audit Recommendation

The Board should meet with the Department of Consumer Affairs, the Department of Motor Vehicles, and the Agency to explore organization alternatives which would provide the best and most efficient consumer services.

NMVB Response

The Board concurs. The Board looks forward to implementing the audit recommendation, especially in light of the fact that eight other government entities referred 160 written consumer complaints to the Board in fiscal year 1995/96 alone. This number does not include telephone inquiries from other government entities which ultimately resulted in the consumer directly filing a complaint form with the Board. The Board President has already had preliminary discussions with the Agency Secretary of the State Consumer and Services Agency. The Board is confident that future meetings will be very productive.

NOTE: In compliance with this Audit Finding, all consumer inquiries are referred to departments with primary jurisdiction. For example, “Lemon Law” complaints are referred to the Department of Consumer Affairs, complaints concerning used vehicle dealers are referred to DMV Investigations, and complaints concerning auto repair facilities that are not also new car dealers are referred to the Bureau of Automotive Repair. However, consumers requesting mediation of disputes with new vehicle dealers and manufacturers are processed by staff in the Consumer Mediation Services Program. In 2004, legislation became effective that brought recreational vehicles (RVs) under the Board’s jurisdiction. The legislation included provisions requiring the Board to recommend that the consumer seeking a refund or replacement of an RV consult with the Department of Consumer Affairs. In May 2011, an inter-agency memo was sent to agencies the Board refers to and those that refer to the Board to reinforce the Board’s jurisdiction and services offered by the Consumer Mediation Program. In March 2014 and June 2016, letters similar to those sent out in 2011 were again mailed to government and private agencies to reinforce the Board’s jurisdiction and services offered by its Mediation Program.

DMV’s Response

The Director concurs with this recommendation. It would require the Board to stay within its statutory and budgetary parameters if the Board remains within the Department. A start toward this objective should also include a review of the Board’s mission and goals to determine essential services.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Board and staff members should meet with BT&H, DMV and DCA to discuss organizational alternatives with a report to the full Board.

DMV’s Response to CAP

Corrective plan does not address Department’s recommendation that the Board review its mission and goals to determine essential services. The response indicates that for the time being, the Board will continue doing what it has been doing.

Date Completed

December 1998

CAP Committee Proposal

The Board staff will continue informal mediation and will send out the Lemon-Aid pamphlet prepared by the Department of Consumer Affairs. It will not advertise its services nor will any type of consumer newsletter be disseminated.

Audit Finding: 11

The Board does not have a new member introduction program.

Audit Recommendation

The Board should consider organizing some type of member education program to assure that all members are exposed to the rules, regulations, and procedures governing their areas of responsibility.

NMVB Response

The Board concurs. The Board is now participating in training for new members as well as ongoing in-service training for current members. At the July 12, 1996, General meeting, the Board specifically discussed member training and education, NMVB's Consumer Mediation Program, the computer system and support services, and Open Meeting Laws. Additionally, the Board discussed availability of specialized Board member training for both new and existing Board members in order to help familiarize the members with issues concerning the responsibilities of Board members, state administrative duties of the members and staff, limitations and restrictions on members to act in certain situations and over certain matters submitted to the Board for determination. The members of the Board were receptive to this type of training and education, and Board staff was instructed to explore, in greater detail, the availability of such programs for future Board member participation. It is anticipated that Board training and education will be part of most future meetings.

NOTE: At its July 18, 2000, General meeting, the members of the Board adopted a report from the Board Development Committee, which recommended new member orientation and a Board member education program for new and existing members. The new member orientation program is used for all new Board members. Board member education is scheduled for most, if not all, Board meetings. Annually, a schedule of educational speakers and industry related tours are developed and implemented.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Board member education has been discussed at the July and October 1996, General meetings, and is scheduled for most, if not all general Board meetings.

DMV's Response to CAP

Date Completed

October 1996

CAP Committee Proposal

Audit Finding: 12

The Board should review its case management quality assurance system.

Audit Recommendation

The Board should develop a process for reviewing case management activity including the quality, quantity, and timeliness of legal work performed on behalf of the Board. One method is to assign a specific Board member as a case liaison for each case.

NMVB Response

The Board concurs. Board members have discussed the existing data processing system, including the hardware and software configurations, as well as the advantages and limitations of the system. The Board members were apprised that, at present, the Board does not have a specific automated case management system in place, the existence of which would ensure that matters are handled more expeditiously. At the July 12, 1996, General meeting, staff was authorized to explore implementation of an automated case management system which would utilize existing hardware. Staff work would include an analysis of the cost of such system in relationship to the benefits provided. The Board President recently attended an exhibition on computer software for the legal profession and has provided materials to staff. The Board staff is currently working on an analysis of these materials, as well as independent research. The results of the staff research will be presented for Board consideration at a future meeting.

NOTE: Cases are managed by the Board counsel through a calendaring system. Efforts to improve the management of Board cases via software are regularly reviewed internally and tested for compatibility. DMV monitors all acquisitions in this regard and also provides testing services. In addition, the Policy and Procedure Committee, along with input from legal counsel for dealers and manufacturers, recommended revisions to the Board case management procedures which were adopted by the members at the April 27, 2001, General meeting. The recommended changes did not require regulatory and statutory revisions. In March 2002, the Board adopted a proposal to undertake a comprehensive review and analysis of its enabling statutes and regulations that would require revisions. Input was solicited from the Board Administrative Law Judges and legal staff, attorneys that regularly practice before the Board, industry personnel, and Board members. As a result of the review, recommended revisions to the Board case management procedures that require regulatory and statutory changes were approved at the September 10, 2002, and October 29, 2002, General meetings. All of the legislative and regulatory changes have been approved and are effective. The Board's internal procedures, policies, and publications have been updated to incorporate these changes.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Board members and staff are currently reviewing the new DMV Legal Office case management system, along with other alternatives. A decision should be made soon.

DMV's Response to CAP

The CAP does not address quality issues. Even if the Board could use or acquire the DMV Legal Office's new case management system, that would not resolve quality issues associated with substantive legal work, meeting minutes, etc.

Date Completed

January 1998

CAP Committee Proposal

Audit Finding: 13

The Board has not adopted an Administrative Enforcement Manual.

Audit Recommendation

The Board should consider whether publication of introductory materials and/or availability of an administrative enforcement manual would be sufficiently helpful to either Board members, new practitioners, or others to justify investment of the required resources.

NMVB Response

The Board concurs. In 1986, the Board published a guide to the New Motor Vehicle Board. However, this guide is presently not up to date. The Board's staff has been working for more than one year on a practice and procedure guide for those who seek to use the Board's services. The Board discussed this issue at the August 20, 1996, General meeting and provided direction to the staff regarding the types of materials the Board feels appropriate. Other avenues of public education are being explored, e.g., continuing education classes, Internet web sites, and educational brochures. The Board is also exploring methods of publishing and disseminating the above materials at no cost to the State by utilizing private sector resources.

NOTE: A Guide to the New Motor Vehicle Board was published in July 1997 and revised in April 1999. The Guide functions like a practice manual for attorneys appearing before the Board. It contains the "new" APA, the applicable Vehicle Code and regulatory sections. Supplements to the Guide have also been published as changes dictate. A March 2001, Supplement was published and disseminated to Board members and staff, the public mailing list, and specific manufacturer and dealer attorneys. In January 2002, the Board staff incorporated all of the changes contained in the Supplement into the Guide along with all statutory changes effective January 1, 2002. A revised Guide dated January 2002 was disseminated to all new motor vehicle and motorcycle dealers, manufacturers, distributors, the public mailing list, and in-house and outside counsel that regularly practice before the Board. At the December 5, 2003, Special meeting, the members adopted a revised Guide. A revised Guide dated January 2003 was disseminated by the DMV to all licensees within the Board's jurisdiction in March 2003. Annually the Board revises its Guide to incorporate all statutory and regulatory changes. The Guide is available on the website and a notice to that effect is disseminated annually.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Draft manual presented to the Board at February 1997 General meeting. Following Board review of the manual titled "Guide to the New Motor Vehicle Board" will be printed and disseminated to interested parties.

DMV's Response to CAP

Under the "new" APA, the Board must make available to interested parties all statutes and regulations pertaining to hearing procedures for matters heard by the Board. It must be noted that the Board cannot simply draft a manual containing substantive procedural requirements; unless adopted as a regulation.

Date Completed

July 1997

CAP Committee Proposal

During a meeting with Madeline Rule, then Assistant Chief Counsel, DMV, it was determined that as long as the Guide was a recitation of the Vehicle Code, regulations, and case law with the authorities referenced thereto, it did not need to be promulgated as rulemaking.

Audit Finding: 14

The Board should ensure that all required transaction reports are filed with the Agency.

Audit Recommendation

The Board should work with the Department and the Agency to ensure that all required transaction reports are correctly forwarded.

NMVB Response

The Board concurs. Action has been taken to bring the Board into compliance with this finding. The Board did not always file the required transaction reports with Agency because, oftentimes, it was not aware of any requirement to do so. It appears that the memorandums setting forth the policy concerning the various transaction reports were sent to the Department, but often the Department didn't forward them to the Board or otherwise make the Board aware of the requirements.

NOTE: Board Chief Counsel is in contact with Agency counsel concerning the Board's court cases. Agency is also provided with a Week Ahead Report by Senior Staff Counsel containing significant issues that may be of interest to the administration.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The DMV has taken steps to ensure that the Board is provided all necessary information to file the reports. The significant litigation report is filed with BT&H Agency by the 5th of each month.

DMV's Response to CAP

The Director is being provided reports sent by the Board to Agency.

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 15

Board delegations are not formalized.

Audit Recommendation

Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals.

NMVB Response

The Board concurs. The Board's enabling statutes and regulations, contained in Title 13 of the California Code of Regulations, contain several references to situations where the Board, its secretary, or a hearing officer designated by the Board, can perform certain functions. The Board recognizes the need to develop further formal delegations, and has commenced corrective action.

NOTE: The Budget and Finance Committee considered all of the duties of the Board and staff, and recognized those that, by statute or regulation, are retained by the Board or are already delegated to designated individuals. In addition, the Committee report recommended which administrative duties should be delegated to staff and the level of Board oversight over these activities. The recommendations also contained an indication as to transaction type and dollar limit for procurement of goods and services, where applicable. The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee. At the May 26, 2011, General Meeting the annual review of these delegations was made an exception report. The Board staff continues to review these delegations each year. Revised delegations were adopted at the July 15, 2014, February 10, 2016, and January 18, 2017, General Meetings to implement legislation (Senate Bill 155, Assembly Bills 759 and 1178, and Assembly Bill 287, respectively). Article 6 of the Vehicle Code was repealed effective January 1, 2019, and the Board revised its Legislative Policy so revised delegations were adopted at the June 7, 2019, General Meeting. At the February 16, 2021, General Meeting, revised delegations were adopted to reflect: (1) Section 3050 was re-lettered; (2) Article 3 Appeals were repealed; (3) The methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" (Section 3065.2); (4) Sections 3065.3 and 3065.4 protests; (5) The Board's authority to hear Export or Sale-for-Resale Prohibition Policy protests in Article 6 was restored (Assembly Bill 179); and (6) Updates concerning recent staff promotions. At the April 28, 2023, General Meeting, delegations were updated to delete obsolete references to appeals in Section 3008. Additionally, for a period not to exceed three years, the Executive Director was given discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director will seek Executive Committee permission. Delegations were updated at the August 9, 2024, General Meeting: (1) Discretion authorizing the Executive Director to remove an ALJ from an assignment log based on performance; (2) Recruitment and hiring practices with the goal of filling at least 44% of Board public contact positions with bilingual employees; (3) Prior review of all new and revised policies by the Ad Hoc Committee on Equity, Justice and Inclusion prior to Board action; (4) Assembly Bill 473 added three new protests to Vehicle Code section 3065.3; (5) The Board adopted Strategic Plan 2024-30; (6) Executive Director discretion to take action responsive to the objectives in the Strategic Plan; and (7) Delegation of the personnel duties in the Delegation of Administrative Duties to the Assistant Director and Equity Officer.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The Board's Budget and Finance Committee presented recommendations concerning delegation that were adopted at the March 18, 1997, meeting.

DMV's Response to CAP

The response and corrective action plan are vague and not fully responsive. Further, the absence of an approved organization chart of the Board is not addressed.

Date Completed

March 1997

CAP Committee Proposal

Audit Finding: 16

The Board should consider distribution of assignments.

Audit Recommendation

The Board should review the amount of routine administrative detail which might be appropriately dealt with by committee or temporary task group in order to ensure that the Board receives all of the information which it desires and that deliberative processes of the Board are not reduced in favor of administrative detail. For instance, the Board might consider whether there is a need for the following types of committees: budget & finance; personnel; ethics; audit; legislative; judicial relations; board education; consumer education; industry education; and intergovernmental relations.

NMVB Response

The Board concurs. At its General meeting of July 12, 1996, the Board President announced the formation of a Budget and Finance Committee and a Judicial Procedures Committee and appointed members to each Committee. Other committees will be formed as and when appropriate. The Board is also implementing a rotation system whereby all Board members will have the opportunity to be the presiding official at Board hearings.

NONE: A number of Board committees have been created over the years. At its May 25, 2000, General meeting, the members adopted the Audit Review Committee's proposal to consolidate the existing 10 advisory committees into the following committees: (1) Administration Committee; (2) Policy and Procedure Committee; (3) Board Development Committee; and (4) Executive Committee. At the September 12, 2000, General meeting, the members adopted the Executive Committee's recommendation of splitting off the budget and finance functions currently assigned to the Administration Committee and created a Fiscal Committee. At the December 5, 2002, Special meeting, the Government and Industry Affairs Committee was created. At the April 21, 2005, General meeting, a Search Committee was created on an ad hoc basis for purposes of filling the Executive Director vacancy upon Tom Novi's retirement. At the February 11, 2008, General meeting, an Ad Hoc Rulemaking Committee was created. Annually, the Board President reviews these committee designations and periodically creates Ad Hoc Committees.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

At the July 1996, General meeting, Judicial Policies and Procedures, and Budget and Finance Committees were established.

DMV's Response to CAP**Date Completed**

May 2000

CAP Committee Proposal

Audit Finding: 17

The Board should adopt an audit resolution policy.

Audit Recommendation

The Board should adopt an audit resolution policy which involves the Board, management, and program staff in ensuring that corrective actions are satisfactorily resolved. The Audit Office has developed suggested language which can be used if desired.

NMVB Response

The Board concurs. The Board President shall prepare initial responses to findings of the draft audit report, and have the responsibility to submit these responses to Agency. The Board should designate a Board employee to oversee audit follow-up, including resolution and corrective action. The designated Board employee shall work with the Board President to develop a written Corrective Action Plan (CAP) for those audit findings which indicated that a deficiency exists in Board operations. The CAP shall be presented to the full Board for approval. The CAP will include targeted improvement measures, responsibility of assignments, and estimated completion times. It will also describe the level of risk assumed by the proposed resolution and the level of loss prevention controls desired. The designated Board employee shall also be responsible for ensuring that prompt and proper implementation of the adopted CAP actually occurs, monitoring corrective action and preparing summary reports that shall be submitted to the full Board for approval. Summary reports should be prepared and filed with Agency at no less than 6-month intervals until the subject of the audit findings is corrected.

DMV's Response

None.

Current Status

As a result of the corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV's Response to CAP

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 18

The New Motor Vehicle Board does not have an adequate audit trail to account for all fees paid to the Board.

Audit Recommendation

The Board should revise its petition and protest case log and check log formats to ensure that they provide sufficient information to enable internal staff and external auditors to verify that all required fees have been paid and are accounted for. Further, the Board should review the duties of Board staff and revise responsibilities so that sufficient separation of duties exists to ensure adequate internal controls over cash receipts. Specifically, one person who is responsible for billing, accounts receivable detail, general ledger posting, and invoice processing should open all mail and list all checks. That listing should periodically be reconciled with amounts recorded on the deposit log prepared by a different person who records the check deposits. These reconciliations should be available for audit.

NMVB Response

The Board concurs. Corrective action has been taken to satisfy the concerns raised by this finding.

NONE: The Board's internal procedures are consistent with the policy developed by the Budget and Finance Committee.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding to confirm the action taken adequately addresses the finding.

Corrective Action Plan Report

The Budget and Finance Committee adopted a policy which addresses this finding at a November 1996, Committee meeting. The Board adopted the Corrective Action Plan Report in which this policy was encompassed at its February 12, 1997, General meeting.

DMV's Response to CAP

Based on the revisions presented it appears the Board's revised procedures should ensure that all monies received were deposited and that a record of those receipts will be retained for audit purposes. The response appears to have addressed the separation of duties problem. There are four concerns: (1) how the reconciliation will be documented and retained for audit purposes; (2) unsure whether all filing fees for petitions are accounted for; (3) unsure if proper amount was collected for each party; (4) unsure if there is a separation between the person that records the cash receipts and the person that records deposits.

Date Completed

November 1996

CAP Committee Proposal

Audit Finding: 19

Travel expenses for out of state trips were not approved by the Board.

Audit Recommendation

The full Board or its Personnel, Finance, or Program Committee should review out-of-state trip requests before they are submitted through the budget process to the Governor's Office for approval to decide appropriate Board representation if the trips are determined to be cost beneficial. This recommendation is made only as a matter of appropriate policy regarding separation of duties and management authorization. Our testing of accounting controls did not note any monetary violations of state procedures for filing claims for travel expenses by employees or officers of the Board for either in-state or out-of state trips.

NMVB Response

The Board concurs. Travel procedures for the Board and its staff were discussed at the July 12, 1996, meeting. At that time, the Board adopted a policy to ensure that the members of the Board are fully apprised of and actually approve the budgetary allotment for and participation in any out-of-state travel. This policy requires review of the out-of-state travel proposals prior to the time the requests for out-of-state travel are submitted to Agency. Prior Board review and approval will also be obtained when any previously approved out-of-state trip is modified as to time, individuals traveling, or destinations.

NOTE: The Executive Committee will authorize who actually attends the out-of-state trips for each fiscal year. This topic is agendaized annually for Board member consideration.

DMV's Response

Out-of-state trips for the Board's employees will be appropriately in the Department's out-of-state blanket after they are approved by the Board.

Current Status

As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV's Response to CAP**Date Completed**

July 1996

CAP Committee Proposal

Audit Finding: 20

Public funds cannot be used for legal work to represent for-profit corporations where the state is not a party to the action.

Audit Recommendation

When the Board develops its internal procedures for legal strategies which include participation in judicial procedures, it should obtain guidance on possible constitutional issues with respect to positions it wishes to advocate.

NMVB Response

To be developed.

NOTE: The Board instituted a policy that requires the Board President and Agency approval, as necessary. See Audit Finding 4 for a discussion of the Board policy implemented concerning filing amicus curiae briefs.

DMV's Response

None.

Current Status

Corrective Action Plan Report

The Board instituted a policy that results in Board President and BT&H Agency approval, as necessary.

DMV's Response to CAP

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 21

Exempt position time reporting is not in compliance with state requirements.

Audit Recommendation

The Board and the Department should meet to determine that all necessary personnel duties regarding the Department's employees stationed at the Board and the Board's exempt position have been assigned to responsible staff.

NMVB Response

The Board concurs. Board staff, in conjunction with staff of the Department's Human Resources unit, have implemented a procedure to comply with the finding. Beginning with the July 1996, pay period, the exempt position began submitting the executed monthly attendance reports to the Department. However, the Board interprets the recommendation regarding personnel duties to be much broader than accounting or attendance issues, and will meet with the Department to discuss broader personnel duties.

NOTE: At the May 25, 2000, General meeting, the members of the Board adopted the Audit Review Committee's recommendation concerning restructuring the Board's senior management. To help facilitate these changes, Steven Gourley, then DMV Director, committed to working closely with the Executive Committee to appoint the Committee's selections for the Executive Director and General Counsel positions. In turn, the Board decided that the Director could use its statutory exempt entitlement on a loaned basis during the Director's tenure. At the December 11, 2003, Special meeting, then DMV Director Chon Gutierrez informed the Board that it no longer needed the Board's exempt entitlement. By motion and unanimous vote, the Board's exempt entitlement is being used for the Executive Director position effective January 1, 2004. All Board staff, including the Executive Director, report their time to the DMV in compliance with state requirements.

DMV's Response

The Department's Human Resources staff will meet with Board staff to ensure that duty statements are current and that Board staff and Department employees have a time reporting procedure.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Since the audit, attendance sheets have been submitted for the exempt position.

DMV's Response to CAP

Date Completed

May 2000

CAP Committee Proposal

Audit Finding: 22

The Board does not have an Information Security Officer (ISO).

Audit Recommendation

The Board should appoint a liaison ISO to work with the Department's ISO to ensure that the Board's operations maintain at least the same level of security as the rest of the Department.

NMVB Response

The Board concurs. At the August 20, 1996, meeting, the Board designated Assistant Executive Secretary Michael M. Sieving to serve as liaison Information Security Officer to work with the Department's ISO to ensure compliance with information security procedures.

NOTE: When Tom Novi was appointed to the position of Assistant Executive Secretary and ultimately the Executive Director, Mr. Novi assumed these duties. When Mr. Novi retired in October 2005, and Mr. Brennan was appointed to the Executive Director position, he assumed these duties until his passing in November 2017. Timothy M. Corcoran was appointed the Executive Director on January 24, 2018; he took his oath of office on February 5, 2018, and assumed these duties.

DMV's Response

The Director is requesting that our Information Security Officer meet with the Board Liaison to ensure that there is a comparable and adequate security level.

Current Status

As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV's Response to CAP

Date Completed

July 1996; December 2000

CAP Committee Proposal

Audit Finding: 23

Inventory tags have not been attached to state equipment.

Audit Recommendation

The Board should immediately affix the inventory tags which have been provided by the Department to the appropriate equipment.

NMVB Response

The Board concurs. Board staff has affixed the decals as prescribed and has noted the property tag number on the equipment inventory.

NOTE: New equipment receives the appropriate inventory decals as prescribed.

DMV's Response

The department has already provided the inventory tags to the Board. We support your recommendation that the Board immediately affix the tags.

Current Status

As a result of corrective action already implemented, the Board does not anticipate submitting a CAP regarding this finding.

Corrective Action Plan Report

None required.

DMV's Response to CAP

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 24

The computer system needs additional physical security devices.

Audit Recommendation

The Board should acquire some type of smoke detector and a plastic emergency tarp to cover the network server computer equipment in the event of water damage.

NMVB Response

The Board concurs. The Board is in the process of procuring a smoke detector, as well as plastic tarps which will be available to cover the main server and other computer equipment in the unlikely event of water damage.

NOTE: Locks are provided for all laptops. The Board's server is managed/housed by DMV IT and is subject to their mitigation protocols. Smoke detectors are managed by DMV Facilities and are subject to Fire Marshall rules.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

A smoke detector will be installed in February 1997. Tarps are operational.

DMV's Response to CAP

Physical security devices are usually called for to protect the utility of desktop computing assets. The CAP does not include provisions for lock down devices to prevent the removal of hardware.

Date Completed

February 1997

CAP Committee Proposal

Audit Finding: 24(25)

Virus protection procedures need improvement.

Audit Recommendation

Responsible data processing staff should become familiar with installed protections and obtain training on activation of protective software.

NMVB Response

The Board concurs. The Board believes that the current virus protection system is inadequate, and is in the process of procuring additional virus protection software. Additionally, appropriate staff training will be implemented.

NOTE: Anti virus software has been installed on the LAN server and on all PCs and laptops. The software is updated regularly by DMV's Information Systems Division (DMV/ISD).

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

In January 1997, Anti virus software was ordered, and subsequently installed in September 1997.

DMV's Response to CAP

The Anti Virus program will be an automated program which will protect the system from viruses from local input devices and on-line services. The staff will be trained once the system is received and installed.

Date Completed

September 1997

CAP Committee Proposal

Audit Finding: 25(26)

Password protection is inadequate or not operational.

Audit Recommendation

The Board should ensure that its data processing system receives a periodic independent review to detect situations where internal controls have been inadvertently removed.

NMVB Response

The Board concurs. The Board has instituted a policy of changing passwords at scheduled intervals. Unused workstations have been locked off so that unauthorized users are unable to access the network, and the Board is exploring the option of procuring additional software to increase password protection.

NOTE: The Board's LAN servers and PCs are monitored and maintained by DMV/ISD. Passwords are required to be changed every 45 days.

DMV's Response

None

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

In September 1996, password protection was installed.

DMV's Response to CAP

The CAP does not identify the password mechanism used, it does not address the basic issue of security awareness so that employees understand the importance of effective password management, nor does it state that all critical systems and files are password protected.

Date Completed

September 1996

CAP Committee Proposal

Audit Finding: 26(27)

Data processing system documentation could be strengthened.

Audit Recommendation

Data processing staff should update diagrams and documentation sufficiently to allow unfamiliar users to learn the system.

NMVB Response

The Board concurs. The Board's staff is in the process of preparing procedural manuals for all data processing programs currently in operation.

NOTE: Configurations of the LAN server are documented in numerous procedural manuals which are maintained by DMV/ISD. Software installation and data back up are strictly controlled.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

New software installations are recorded on a software installation log. Procedures for re-installing and restoring software and backup data are currently being re-established to meet Departmental standards.

DMV's Response to CAP

Date Completed

August 1997

CAP Committee Proposal

Audit Finding: 27(28)

Higher level security access control is inadequate.

Audit Recommendation

The Executive Secretary should assure that duty statements covering access at the highest level of security are limited to those who cannot originate or approve transactions and who are directly responsible for the tasks associated with system security.

NMVB Response

The Board concurs. The Board is taking steps to modify the procedure to comply with the audit recommendation.

NOTE: Security access to the Board's LAN server is controlled by DMV/ISD. No Board employees have access to the server. A limited number of Board employees have administrative access to the Board's PCs and laptops.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

At the time of the Audit, six Board employees had Supervisory status. Supervisory equivalence on the LAN allows total access to the entire system. Since the Audit, Supervisory status has been delegated to two individuals on the Board's staff. This has eliminated the problems identified by the Audit.

DMV's Response to CAP

The Board should have a detailed, properly adopted Conflict of Interest Code, designating the positions and disclosure category for each, just as the DMV does.

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 28(29)

Designation of economic conflict-of-interest filing officials is incomplete.

Audit Recommendation

The full Board or its Ethics or Personnel Committee should review its economic conflict-of-interest regulations to determine whether changes are needed to conform inconsistencies in its regulations in order to comply with applicable statutes. Since the administrative law judges of the Board are employees of the Department, the Board should work with the Department to ensure that regulations are in conformance.

NMVB Response

The Board concurs with the recommendation regarding this Audit Finding, but needs additional information to reach a conclusion regarding the finding itself. Both the Board President and a staff counsel have been in contact with the FPPC to determine the best method to implement the recommendation. A representative of the FPPC advised the Board that it generally receives filings only from Board members and the senior member of the executive staff, not positions such as administrative law judges or the Assistant Executive Secretary. This is due to storage limitations at the FPPC. The Board will continue to explore this topic.

NOTE: Due to the restructuring of the Board's senior management, the Conflict of Interest Code was revised in accordance with the procedure established by the FPPC and the Office of Administrative Law. At the November 20, 2001, General meeting, the members approved the revised text of proposed revisions to the Conflict of Interest Code which incorporated suggestions from the Fair Political Practices Commission. Rulemaking implementing these changes was effective on February 17, 2002. The Conflict of Interest Code was most recently updated and effective on June 20, 2019. At the February 16, 2021, General Meeting, the members approved proposed amendments to the Conflict of Interest Code that were approved by the FPPC in June 2022.

The effective date is September 8, 2022. Amendments are in process to reflect the new Assistant Division Chief/Program Manager position (Assistant Director and Equity Officer.)

DMV's Response

The Director concurs with this recommendation. The DMV's Legal Staff is available for consultation to the Executive Secretary, should he require additional information.

Current Status

The Board will submit a CAP regarding this funding.

Corrective Action Plan Report

In August 1996, Wayne Imberi of the Fair Political Practices Commission stated that the FPPC does not want the statements of the Assistant Executive Secretary or hearing officers. These statements should be retained by the agency. The Assistant Executive Secretary and hearing officers file conflict of interest statements with the Board which are retained internally.

DMV's Response to CAP

Date Completed

August 1996

CAP Committee Proposal

Audit Finding: 29(30)

The Board should promptly cause the investigation of suspected irregular activities.

Audit Recommendation

The Board should promptly investigate or cause the investigation of suspected irregular activities and should file the required incident reports.

NMVB Response

The Board concurs. The Board staff has contacted the Department's Information Protection Program and has met with officials of the Department's Internal Affairs investigations unit. Additional meetings are scheduled to discuss implementation of procedures for reporting future incidents. It should be noted that the Department has been extremely cooperative in this regard, and has responded to the Board's concerns with valuable suggestions and information.

NOTE: The Board staff complies with all DMV policies concerning reporting and investigation of suspected irregular activities.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

In December 1996, the Board staff implemented the DMV policy concerning reporting of suspected irregular activities.

DMV's Response to CAP

Date Completed

December 1996

CAP Committee Proposal

Audit Finding: 30(31)

Board staff do not have access to written guidance on appropriate behavior.

Audit Recommendation

The Department of Motor Vehicles should ensure that the Board's employees are added to the appropriate distribution lists for its department wide announcements. The Board should make an effort to seek guidance when it encounters situations for which it is likely that published rules exist.

NMVB Response

The Board concurs. The Board's staff has sent a memorandum to the Department specifically requesting that the Board be put on the mailing list for all documents which are disseminated to the Department's programs and divisions.

NOTE: All staff have access to written guidance on appropriate behavior via the DMV Driver and the DMV Expectations document. **These documents are also provided to staff.**

DMV's Response

The Director has requested that the Board be added to the appropriate distribution lists and encourages management at the Board to ensure employees have received adequate training which is available to them from the Department.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

The Board is now on the DMV mailing list for all divisions. Copies of all memos are given to all Board employees.

DMV's Response to CAP

Date Completed

July 1996

CAP Committee Proposal

Audit Finding: 31(32)

The Board has not purged computer records.

Audit Recommendation

Staff should review the requirements for retention and destruction of electronic records to ensure that the program is in compliance.

NMVB Response

The Board concurs. The Board will seek assistance and guidance from the Department in the development and implementation of a policy for retention/purging of computer records.

NOTE: The Board staff retains mediation records on the LAN for three-years. After three years, data is removed from the LAN and stored on CD ROM. With regards to the Legal Division, computer records are archived to CD ROM on an as needed basis.

DMV's Response

None.

Current Status

The Board will submit a CAP regarding this finding.

Corrective Action Plan Report

Since September 1996, the Board has implemented a two-year retention policy for computer records for the Mediation Services Program. Any data older than two years is purged at the end of each fiscal year. The Board backs-up the entire system every day and these tapes are kept in the safe.

DMV's Response to CAP

Date Completed

September 1996

CAP Committee Proposal



Memorandum

Date : February 6, 2025

**To : FISCAL COMMITTEE
BISMARCK OBANDO, CHAIR
ASHLEY DENA, MEMBER**

**From : SUZANNE LUKE
KIMBERLEE VAYE
TIMOTHY CORCORAN**

**Subject : REPORT ON THE BOARD'S FINANCIAL CONDITION OF FISCAL YEAR 2024-2025
(JULY THROUGH DECEMBER)**

The following is a financial summary of the Board's expenditures and revenue reflecting July through December of Fiscal Year (FY) 2024-2025.

Revenue Fiscal Year 2024-25

Beginning Reserve Balance	Quarter 1 Revenue	Quarter 2 Revenue	Quarter 3 Revenue	Quarter 4 Revenue
\$1,639,000	\$1,020,641	\$342,008		

Expenditures Fiscal Year 2024-25

Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Total Expenditures	Appropriation Remaining %
\$2,151,000	\$261,732	649,794	TBD	TBD	\$911,526	58%

Pursuant to Section 3.60 of the 2024 Budget Act, departmental appropriations were adjusted to accurately reflect the state's share of retirement costs through the Budget Executive Order process. This resulted in an overall decrease of \$12,000 for NMVB.

Administrative Expenditures Fiscal Year 2024-25

Pro Rata	Supplemental Pension Payments	DMV Administrative Charge
\$135,000 (estimate) YTD: \$80,209.00	\$24,000	\$100,084

Pro Rata assessments: 8/15/2024 \$25,870.00. 11/8/2024 \$54,339.00.

Current Reserve Balance – \$2,009,914 balance after December Expenditures. Includes Pro Rata deduction recorded at the fund level, not at agency level.

- New Motor Vehicle Board (NMVB) Annual Fee – The NMVB annual collection of fees from manufacturers and distributors began in July. Staff have collected \$866,071.81 of the \$866,371.81 from manufacturers and distributors under NMVB jurisdiction. This amount includes a January deposit.
- Office of Administrative Hearings (OAH) – Two OAH invoices from FY 23/24 totaling \$55,927 were added to our current fiscal year expenditures. These charges occurred in FY 23/24 and were noted in previous Fiscal memos, but it was discovered that the funds were not taken out of our account until September 2024 and November 2024.

This memorandum is being provided for informational purposes only, and no Board action is required. If you have any questions prior to the Board Meeting, please contact me at (916) 244-6778.

Attachments as stated

cc: Ardy Kassakhian, President

Revenue and Expenditure Summary
Fiscal Year 2024-2025
Covers July 1, 2024 to December 31, 2024

REVENUES

New Dealer Licensing Fee:	\$490,405
Manufacturer and Distributor Fee	\$866,072
NMVB Filing Fee	\$3,600
Miscellaneous Services	\$483
Arbitration Program	\$2,089
Year-to-date total:	\$1,362,649

EXPENDITURES

Payroll

Full-Time staff salaries:
Budgeted Amount: \$1,155,000
Expended: \$490,866

Part-Time staff salaries:
Budgeted Amount: \$79,000
Expended: \$112,649

Benefits:
Budgeted Amount: \$634,000
Expended: \$227,589

Operating Expense and Equipment

General Expense (includes equipment, office supplies, dues, legal library, etc.):
Budgeted Amount: \$36,410
Expended: \$6,934

Travel In-State:
Budgeted Amount: \$10,000
Expended: \$3,934

Professional Services (Attorney General):
Budgeted Amount: \$18,500
Expended: \$0

Office of Administrative Hearings:
Budgeted Amount: \$157,590
Expended: \$55,927 (2 invoices from FY 23-24/Paid out of FY 24-25)

Professional Services (Court Reporter):

Budgeted Amount: \$17,500

Expended: \$3,684

Encumbrance Balance

\$9,763

TOTAL OPERATING EXPENSE AND EQUIPMENT

Budgeted Amount: \$245,000

Expenditure Year to Date: \$70,659

GRAND TOTAL – Fiscal Year 2024-2025

Beginning Reserve Balance: \$1,639,000

Revenue Year to Date: \$1,362,649

Expenditure Year to Date: \$911,526



Memorandum

Date : February 7, 2025

To : FISCAL COMMITTEE
BISMARCK OBANDO, CHAIR
ASHLEY DENA, MEMBER

From : KIMBERLEE VAYE
TIMOTHY CORCORAN

Subject : DISCUSSION AND CONSIDERATION OF OUT-OF-STATE TRAVEL PLANS FOR
FISCAL YEAR 2025-2026

BACKGROUND

It is the policy of the Board to review and approve all out-of-state travel plans. State policy mandates that out-of-state travel be mission critical or must be beneficial to the state.

CONSIDERATIONS

Board staff is prepared to submit travel proposals for one out-of-state travel opportunity in FY 25/26.

- Eight (8) trip requests for up to four staff and up to four Board members to attend the National Association of Motor Vehicle Boards and Commissions (NAMVBC) Fall Conference in September 2025 (tentatively), held in Arizona or another bordering state.

If four staff and four Board members attend, staff estimates the expense will not exceed \$15,000.

Staff will submit the requests to the Department of Motor Vehicles and the California State Transportation Agency for final approval.

RECOMMENDATION

It is recommended that the Board approve these travel requests and give the Executive Director broad discretion to send up to four staff and up to four Board members to this event if it is to be held in a bordering state.

If you have any questions prior to the Board Meeting, please contact me at (916) 244-6774.

cc: Ardy Kassakhian, President



Memorandum

Date : FEBRUARY 3, 2025

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : DISCUSSION AND CONSIDERATION OF PROPOSED REVISIONS TO THE
ASSIGNMENT OF CASES TO EXCLUSIVELY USE THE OFFICE OF
ADMINISTRATIVE HEARINGS FOR ALL MERITS HEARINGS**

At the January 25, 2023, General Meeting, the Board added the Office of Administrative Hearings ("OAH") to the "Merit Hearings Judge Assignment Log," so OAH would be next in line to preside over a protest hearing between a franchisee and franchisor. Adding OAH to the assignment log would allow the Board to evaluate if this is an effective long-term alternative if the Board is unable to retain its retired annuitant merits Administrative Law Judges.¹ It would also highlight any statutory or regulatory changes that may be necessary if, in the future, the Board's merits hearings are referred to OAH.²

Given the limited number of matters that proceed to a hearing on the merits each year, at the April 28, 2023, General Meeting, the Board granted temporary discretion (not to exceed 3 years) to the Executive Director to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director would seek Executive Committee permission.

Protest No. PR-2759-21 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company* was assigned to OAH. At the June 28, 2024, General Meeting, the Public Members adopted the Proposed Decision as amended. This process could not have been smoother from the initial discussions with OAH leadership to their willingness to participate in training of a broad overview of the Board. The hearing was flawless. The assigned ALJ conducted the hearing with the utmost professionalism. He was fair and consistent. OAH's staff were responsive, professional, and assisted us in learning their process. The Proposed Decision

¹ In May 2024, the staff learned that the time for promulgating the CalPERS proposed regulation defining "limited duration employment" expired.

² All law and motion hearings and settlement conferences will continue to be heard by the Board ALJs up to the Hearing Readiness Conference. If counsel for the parties at the Hearing Readiness Conference indicate, they are prepared to go to hearing then the Board submits to OAH a Request for Hearing and takes no further action in the protest unless Protestant files a Request for Dismissal.

was timely submitted in ADA compliant format. An electronic version of the administrative record was also provided.

Although the per hour cost of using OAH is more expensive, the staff time spent reviewing the Proposed Decision was markedly reduced from roughly 100-200 hours to 12-15 hours. Whether hearings are conducted by Board ALJs or OAH, the Board legal staff will observe the hearing so there are no cost savings.

At the September 21, 2023, General Meeting, the Board adopted a numerical designation system for assigning ALJs to merits hearings. For new protests starting with Protest No. PR-2832-23, the ALJ was assigned based on the last digit of the case no. as follows:

- 1, 6 OAH
- 2, 7 Pipkin [Next Board ALJ in order]
- 3, 8 OAH
- 4, 9 Nelsen [Following Board ALJ in order]
- 5, 0 Woodward-Hagle [Following Board ALJ in order]

The first protest in numerical order is the lead case in consolidated matters and would be used for ALJ assignments. In the event a Board ALJ is not available, OAH would be the default. This system has worked well so far but no protests have gone to hearing yet.

For existing protests, ALJs are assigned at the Hearing Readiness Conference using the Merit Hearings Judge Assignment Log on a rotational basis. To date, the following matters proceeded to hearing:

- Protest No. PR-2803-22 *KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.* At the November 1, 2024, General Meeting, the Public Member remanded the Proposed Decision for a declaration of the franchisee's retail labor rate and consideration of paragraphs 120 and 161-174.
- PR-2826-23 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company.* The Proposed Decision will be considered by the Public Members at the August 1, 2025, General Meeting.

ALJ Pipkin was assigned to preside over the hearing in PR-2821-23 *Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC* beginning on November 12, 2024 but due to medical reasons ALJ Pipkin was unable to preside. The next ALJ in order on the Merits Hearings Judge Assignment Log is OAH.

The tentative hearing in May 2025 (Protest No. PR-2808-22 (consolidated) *Martin Saturn of Ontario, Inc., dba Subaru of Ontario v. Subaru of America, Inc.*) was vacated as the parties reached a settlement at mediation.

OAH provides the Board with a long-term solution for its hearings on the merits. Effective immediately, the staff propose assigning merits hearings to OAH for all new protests and existing protests. The Board's retired annuitant ALJs would be retained on the Alternative MSC Assignment Log and the Alternative Law and Motion Assignment Log.

Assignment of Cases

Page 3

February 3, 2025

This proposal was reviewed and approved by the Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, meeting. The full Board will discuss and consider this at the February 28, 2025, General Meeting.

If you have any questions or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



Memorandum

Date : FEBRUARY 3, 2025

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : DISCUSSION AND CONSIDERATION OF APPOINTING ROBIN PARKER THE
BOARD'S DESIGNATED MANDATORY SETTLEMENT CONFERENCE
HEARING OFFICER**

On October 28, 2024, President Kassakhian and Vice President Stevens designated Robin Parker, Chief Counsel, as the Board's Hearing Officer for Mandatory Settlement Conferences on an emergency basis given the unexpected passing of Designated Mandatory Settlement Conference Judge Marilyn Wong. Robin has been authorized by the Board since 1997 to preside over law and motion hearings, discovery hearings, and Mandatory Settlements Conferences. (Cal. Code Regs., tit. 13, § 590)

The full Board will consider this designation at its February 28, 2025, General Meeting.

If you have any questions or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



Memorandum

Date : FEBRUARY 3, 2025

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

**Subject : DISCUSSION AND CONSIDERATION OF PROPOSED REGULATORY
AMENDMENTS TO SECTION 551.19 (MOTIONS; FORM, BRIEFING, AND
HEARINGS) OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS**

Section 551.19 of Title 13 of the California Regulations specify the procedural requirements for motions including whether the motion is oral or written, whether an opposition or reply brief is permissible, and if the hearing is in person or telephonic. The regulation requires that hearings on motions with live testimony be conducted in person before the administrative law judge. When this regulation was effective in 2011, remote hearings were not possible. Since 2020, the Board's merits hearings and motion hearings with live testimony have been held remotely via Zoom and teleconference.

To formalize this process in motion hearings with live testimony, staff propose amending Section 551.19 as follows:

§ 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

Proposed Regulatory Amendments

Page 2

February 3, 2025

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 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.

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

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 discussion and consideration at the February 28, 2025, General Meeting.

If you have any questions or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



Memorandum

Date: FEBRUARY 4, 2025

To: POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER

From: TIMOTHY M. CORCORAN
JASON A. ROSE

Subject: CONSIDERATION OF 2025 RULEMAKING CALENDAR

Government Code section 11017.6 requires that every state agency prepare a rulemaking calendar that identifies proposed regulations implementing statutes enacted during the year 2024 and the years prior to 2024. The rulemaking calendar (Attachment 1) is submitted for approval to the Board members, California State Transportation Agency, and ultimately published in the California Regulatory Notice Register by the Office of Administrative Law. The text of proposed regulations to be promulgated in 2025 is reflected in Attachment 2.

This matter is on the agenda for consideration at the February 28, 2025, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 445-1888 or Jason at (916) 505-2114.

Attachments

cc: Ardashes Kassakhian, President

**California New Motor Vehicle Board
2025 RULEMAKING CALENDAR**

**SCHEDULE B: PROPOSED REGULATIONS IMPLEMENTING STATUTES ENACTED PRIOR
TO THE YEAR 2024**

Subject:

Annual Board Fee

**California Code of Regulations Title and Sections Affected: Title 13, Sections 553
and 553.20**

Statute(s) Being Implemented: Vehicle Code Sections 3016 and 11723

Responsible Agency Unit: New Motor Vehicle Board

Contact Person and Phone Number: Jason A. Rose (916) 505-2114

Projected Notice Publication Date: June 2025

Projected Public Hearing Date: To be determined.

Projected Adoption by Your Agency Date: September 2025

Projected To OAL for Review Date: November 2025

**Report on the Status of all Uncompleted Rulemaking Described on Previous
Calendars: None.**

§ 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 ~~\$300.00~~ \$425.00, 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 ~~\$.45~~ \$.65 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 ~~\$300.00~~ \$425.00.

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 3016 and 11723, Vehicle Code.

§ 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 manufacturer 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 provided, however, that the fee to be paid by each manufacturer or distributor shall not be less than ~~\$300.00~~ \$425.00. The Board shall thereafter send a written notice by regular mail or electronic-mail 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 3050(a) and 3016, Vehicle Code.



Memorandum

Date : FEBRUARY 3, 2025

To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER

From : TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject : ANNUAL REPORT CONCERNING BOARD ADOPTED POLICIES

Over the past 20 years, the Board has adopted a wide range of policies pertaining to Board operations. While these policies do not have the force of law, they serve as guides to the Board and staff. They may be modified or abolished as the Board deems appropriate. The staff has consolidated the policies into a single document for purposes of consistency and to educate new members.

The attached summary provides the Board with an opportunity to review the policies. Changes consistently using abbreviations for ALJ (Administrative Law Judge), CalSTA (California State Transportation Agency), and OAH (Office of Administrative Hearings) were made throughout but are not reflected. Gender specific language was replaced with gender neutral language. The substantives changes from 2024 are highlighted in underline and strikeout font, and pertain to:

- President Kassakhian converted the Ad Hoc Committee on Equity, Justice and Inclusion to the Committee on Equity, Justice and Inclusion. Delegations made to the Ad Hoc Committee were transferred to the standing committee.
- The adjusted annual gift limit increased from \$590 to \$630 from January 1, 2025, through December 31, 2026.
- Updates were made to the "Appointment of Hearing Officers" to reflect removal of ALJs from assignment logs and the hiring of ALJ Tammy Bayne for law and motion hearings.
- "Case Assignments" were updated to reflect ALJ Marilyn Wong's passing.
- With the addition of OAH to the Board's "Merit Hearings Judge Assignment Log," the policy reflecting the "Source of Board Hearing Officers" is obsolete.
- In the absence of a vendor contract, credit card payments cannot be accepted.

- Board Delegations were updated to reflect:
 - The Executive Director's discretion to remove an ALJ from an assignment log based on performance.
 - That recruitment and hiring practices should be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination.
 - The Committee on Equity, Justice and Inclusion's review of all new and revised policies prior to Board action in order to further institutionalize equity within Board programs.
 - Three new Vehicle Code section 3065.3 protests.
 - The Board adopted Strategic Plan June 2024-30.
 - The Executive Director's discretion to take action responsive to the objectives in the Strategic Plan.
 - Personnel duties in the Delegation of Administrative Duties were updated to reflect the newly created Assistant Director and Equity Officer position.
- The "Delegation of Authority Concerning Promulgating Regulations" was expanded, if necessary, to allow staff discretion in consultation with the Executive Committee to reduce the proposed fees to any number between \$400 to \$425 for the dealer licensing fee and the per vehicle fee of \$.60 to \$.65 for manufacturers and distributors with a minimum of \$400 to \$425.
- The *Guide to the New Motor Vehicle Board, Informational Guide for Manufacturers and Distributors*, and *Export or Sale-for-Resale Prohibition Policy Protest Guide* were updated.
- The Strategic Plan 2024-30 was added.

This matter is being agendized for informational purposes only at the February 28, 2025, General Meeting, and no Board action is required.

If you have any questions or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

Attachment

cc: Ardashes Kassakhian, President

NEW MOTOR VEHICLE BOARD ADOPTED POLICIES

Since 1996, the New Motor Vehicle Board (“Board”) has adopted a wide range of policies pertaining to Board operations and practices. They supplement State and Department of Motor Vehicles (herein “Department” or “DMV”) policies and pertain to issues unique to Board operations. While these policies do not have the force of law, they serve as guides to the Board and staff.

BOARD MEETINGS		
CATEGORY	POLICY	DATE
Bagley-Keene Open Meeting Act Education and Compliance	<p>The Office of the Attorney General recommended that the Board appoint a full-time employee of the Board who is an attorney as the Bagley-Keene compliance officer, rather than hire outside services. In order to comply with this recommendation, the General Counsel¹ is the Bagley-Keene Compliance Officer with responsibility for Board member education and compliance.</p> <p>The Bagley-Keene Open Meeting Act requires that all state bodies “designate a clerk or other officer or employee of the state body, who shall then attend each closed session of the state body and keep and enter in a minute book a record of topics discussed and decisions made at the meeting.” In order to ensure compliance, the General Counsel is responsible for maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act.</p>	July 12, 1996; May 25, 2000
Board Meeting Procedures	<p>The Board approved Parliamentary Procedures are to be utilized in the conduct of its meetings. In the event that a procedural issue arises which is not covered by the Parliamentary Procedures, the relevant provision(s) of Robert’s Rules of Order, The Modern Edition (1989 Version) will control the situation to which the issue applies. The Board revised the Parliamentary Procedures to reflect the changes in organizational structure and the procedure for debate and voting.</p>	March 18, 1997 - Business, Transportation & Housing Agency ² Audit Recommendation 7; January 8, 2003; September 27, 2011

¹ Robin Parker, Chief Counsel, is performing all of the duties previously assigned to the Board’s General Counsel including but not limited to the Bagley-Keene Compliance Officer, maintaining the closed meeting minutes in accordance with the Bagley-Keene Open Meeting Act, the Audit Compliance Officer, and coordinating with the DMV’s Chief Counsel in the event the Board elects to request DMV to take disciplinary actions against a licensee for failure to file statutorily mandated schedules and formulas.

² Business, Transportation & Housing Agency was superseded by the California State Transportation Agency ([CalSTA](#)) on July 1, 2013.

CATEGORY	POLICY	DATE
Board Meeting Procedures -continued-	<p>At the December 2, 2019, General Meeting, changes were approved to automatically fill vacant committee Chair positions with the Member. At the November 4, 2020, General Meeting, the reference to “appeals” in Article 5 (debate and voting) was deleted due to the repeal of appeals effective January 1, 2020.</p> <p>The presiding Administrative Law Judge (“ALJ”) shall prepare a decision cover sheet/analysis which is provided to members with their meeting materials when a proposed decision or ruling is agendized. The decision cover sheet/analysis should be limited to two pages and not contain a recommendation.</p>	<p>December 2, 2019; November 4, 2020</p> <p>December 8, 1998; May 25, 2000</p>
Board Policy Review by the Ad Hoc Committee on Equity, Justice and Inclusion	The Ad Hoc Committee on Equity, Justice and Inclusion will review all new and revised policies prior to Board action to further institutionalize equity within Board programs. ³	September 21, 2023
Dealer Member Participation in Recreational Vehicle (“RV”) Protests and Petitions	Dealer Board members may not participate in petitions involving RV licensees. Dealer members of the Board will participate in, hear, comment, or advise other members upon, or decide protests between RV dealers and franchisors, unless a Dealer Member also has an interest in an RV dealership in which case the Dealer Member will be recused himself or herself from participation in the matter, unless the parties stipulate to such participation. A stipulation concerning such participation was adopted.	December 11, 2003; January 31, 2007; March 28, 2007; November 15, 2007
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act	In compliance with section 11125.7, each agenda item other than an item that requires Board consideration of a proposed decision, ruling, or order, the President or presiding officer shall invite public comment after the item has been presented by staff. The President or presiding officer of the meeting may limit the number and/or the duration of the public comment or comments depending on the time constraints and size of the agenda. The following language is to be inserted into the President’s or presiding officer’s introductory statement prior to Board consideration of a proposed decision, ruling or	September 10, 2009; February 4, 2010

³ At the November 1, 2024, General Meeting, President Kassakhian converted the Ad Hoc Committee on Equity, Justice and Inclusion to the Committee on Equity, Justice and Inclusion. Delegations made to the Ad Hoc Committee were transferred to the standing committee.

CATEGORY	POLICY	DATE
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act -continued-	order, as follows: "Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters contained within the administrative record of the proceedings. No other information or argument will be considered by the Board. Members of the public may not comment on such matters."	
BOARD MEMBERS		
Board Development	In order to ensure familiarity with Board operations and the new motor vehicle industry in general, the Board will provide new member orientation and ongoing educational seminars to new and existing members.	July 18, 2000
Gifts and Honoraria	<p>The Board shall comply with the statutory requirements of the Political Reform Act. In general, the Act provides for a limitation on gifts received by state board members as follows:</p> <ul style="list-style-type: none"> ▪ Gifts provided for or arranged by a lobbyist or lobbying firm if the lobbyist or firm are registered to lobby the member or the employee's agency are prohibited if the aggregate value exceeds \$10 per calendar month from a single lobbyist or lobbying firm. ▪ State board members and designated staff may not accept gifts aggregating more than \$420⁴ from any other single source if that gift would have to be reported on the recipient's Statement of Economic Interest (Form 700). Gifts received from a single source, totaling \$50 or more in a calendar year generally must be reported. The definition of "single source" is set forth in the NMVB Conflict-of-Interest, Appendix B – Disclosure Category which was approved by the Fair Political Practices Commission July 3, 2013, and the Secretary of State on July 24, 2013. The amendments were operative August 23, 2013. (There have been subsequent amendments to the conflict-of-interest code.) 	April 27, 2001; March 23, 2010

⁴ The gift amount is ~~\$590.00~~ \$630.00 (2 CCR §§ 18700 and 18940.2). For purposes of Government Code section 89503, the adjusted annual gift limitation of ~~\$590.00~~ \$630.00 is in effect January 1, ~~2023~~ 2025, through December 31, ~~2024~~ 2026.

CATEGORY	POLICY	DATE
Gifts and Honoraria -continued-	<ul style="list-style-type: none"> With regards to honoraria, the Act provides that members of state boards may not receive honoraria from any source that would be required to be reported on the Form 700 for that official. 	
COURT PROCEEDINGS		
Court Participation on Issues of Interest to the Board	<p>The Board, as a general rule, should not substantively participate in mandamus actions in which a Board decision is challenged. When the Board renders a final decision which is challenged by way of a petition for writ of administrative mandamus, and an important State interest is not raised in the mandamus proceeding, then the Board shall notify the parties to the proceeding of the Board's policy not to appear in the mandamus action, and request that the parties so notify the court and keep it on the proof of service list. As such, unless the court specifically requests otherwise, the Board would not file any pleadings in the court action, which would obviate the necessity of involvement by the office of the Attorney General. However, in mandamus actions in which an important State issue is raised, the Board would have the option to participate by the filing of pleadings opposing the petition and by presenting oral arguments on only those limited issues affecting the State interest. In such situations, prior to Board participation, the matter would be presented to the full Board for review at a regularly scheduled meeting of the Board. In the absence of sufficient time for consideration at a noticed Board meeting, the President, or a Board member designated by the President, can authorize the filing of appropriate pleadings in opposition to the petition and/or the presentation of oral arguments. When this occurs, a copy of the petition and supporting documents would be mailed to each Board member with an indication that the President, or his or her designee, has authorized Board participation. Any Board member who objects to Board participation would then immediately so notify staff and the matter would be scheduled for discussion at either the next general meeting of the Board or, if three public members request, then at a special meeting of the Board. Any appearance by the Board would be made by the office of the Attorney General or, with the</p>	October 22, 1996, February 12, 1997; March 18, 1997 - Business, Transportation & Housing Agency Audit Recommendation 5

CATEGORY	POLICY	DATE
Court Participation on Issues of Interest to the Board -continued-	<p>consent of the Attorney General, by the Board's own counsel.</p> <p>When a Dealer Member is President, only those matters in which a Dealer Member would be disqualified from having heard in the first place are delegated. Furthermore, if you have a Dealer Member as Board President, and a Public Member as Vice President, then the designation should automatically go to the Vice President.</p>	June 26, 2008
Filing Amicus Briefs	<p>The Board will not file any amicus briefs without the consent of Business, Transportation & Housing Agency ("Agency"). As a prerequisite to requesting the consent of Agency, the Board must (a) discuss and approve the consent request at a noticed public meeting, or (b) in the case where time constraints do not permit the foregoing the President may authorize the request for consent. In any instance when the President authorizes the request, a notice shall be immediately sent to Board members. If any member seeks immediate review of this action, the member may request that the President call a special meeting of the Board to discuss the matter. If there is no such immediate review requested, the matter will be included in the agenda of the next regularly scheduled Board meeting. If the Board determines that it does not want to file the amicus brief, the request for consent will be withdrawn.</p>	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 4
CONSUMER MEDIATION PROGRAM		
Consumer Mediation Program	<p>The goal of the Consumer Mediation Program is to informally mediate solutions to disputes between consumers and new car dealers, manufacturers, and distributors. Staff will provide consumers information on the Lemon Law and refer such complaints to the appropriate entity for resolution. Complaints for which other agencies have exclusive jurisdiction will also be referred to those agencies. Program activities will not be advertised, nor will consumer newsletters be disseminated. Rather, activities will be based on referrals from other agencies and sources.</p> <p>Vehicle Code section 3078 requires that the staff recommend to a member of the public that he or she consult with the Department of Consumer Affairs when seeking a refund involving the sale or</p>	<p>December 8, 1998 - Business, Transportation & Housing Agency Audit Recommendation 1 and 10.</p> <p>April 22, 2004</p>

CATEGORY	POLICY	DATE
Consumer Mediation Program -continued-	<p>lease of, or a replacement of, a recreational vehicle. The Board adopted the use of a Mediation Checklist for Recreational Vehicle Jurisdiction when dealing with complaints from the public regarding RVs. The checklist will enable staff to guide the consumer through key Lemon Law criteria and enable the consumer to choose the proper course of action to pursue.</p> <p>An inter-agency memo will be sent to agencies the Board refers to and those that refer to the Board to reinforce the Board's jurisdiction and services offered by the Consumer Mediation Program.</p>	May 26, 2011
HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES⁵		
Appointment of Hearing Officers	<p>Under section 590 of Title 13 of the California Code of Regulations, Robin Parker, Chief Counsel, was appointed by the Board as a hearing officer for the purposes of conducting pre-hearing conferences, rulings on discovery objections, and mandatory settlement conferences. Anthony Skrocki was designated the Law and Motion ALJ responsible for hearing all pre-hearing and discovery motions. In the event of Judge Skrocki's unavailability, an "Alternate Law and Motion ALJ Assignment Log" was established. Robin Parker was added to the "Alternate Law and Motion ALJ Assignment Log" and authorized to preside over law and motion matters in the event no other ALJ is available within a reasonable timeframe and the parties so stipulate.</p> <p>In January 2005, the Board appointed three ALJs: Richard J. Lopez;⁶ Jerold A. Prod;⁷ and Norman Gregory (Greg) Taylor.⁸ Marybelle Archibald⁹ was</p>	<p>August 21, 1997; September 30, 2004; June 26, 2008; November 20, 2008</p> <p>January 26, 2005; September 21, 2005; April 5,</p>

⁵ The term hearing officer and ALJ are used interchangeably throughout this document. Effective January 1, 2004, references to "hearing officer" were changed to "administrative law judge" in Vehicle Code sections 3000, et seq. The Board's regulations and job classifications for hearing officer were also changed to ALJ.

⁶ Due to a work-related conflict, Judge Lopez resigned from the Board effective June 30, 2007. Judge Lopez was removed from the MSC and Merits Judge Assignment Logs.

⁷ Judge Prod retired in August 2013, so he was taken off the assignment logs.

⁸ Due to a work-related conflict, Judge Taylor resigned from the Board. However, in August 2006, Judge Taylor was hired on a contract basis and was available on an initial six-month basis. An extension of this contract was granted until May 14, 2007. On May 1, 2007, Judge Taylor was removed from the MSC and Merits Judge Assignment Logs.

⁹ In March 2011, Judge Archibald resigned effective after the completion of the Proposed Decision and Proposed Decision Following Remand in *Shayco, Inc., dba Ontario Volkswagen v. Volkswagen of America, Inc.*, Protest No. PR-2265-10.

CATEGORY	POLICY	DATE
Appointment of Hearing Officers -continued-	<p>also appointed, as was Diana Woodward Hagle. Linda Waits was also appointed as an ALJ (she resigned in October 2010). In September 2011, the Board appointed three ALJs: Lonnie M. Carlson (he resigned in October 2014), Kymberly M. Pipkin and Victor D. Ryerson (resigned effective August 1, 2017). In January 2017, the Board appointed Evelyn I. Matteucci and Dwight V. Nelsen as ALJs. These judges have been added to the assignment logs. In December 2019, four Board Members appointed Steve Smith as an ALJ subject to checking his references and being ratified by the full Board at its March 5, 2020, General Meeting. <u>ALJs Matteucci and Smith were taken off the assignment logs in 2022 and 2023, respectively. In April 2023, Tammy Bayne was hired as a permanent intermittent Law and Motion ALJ.</u></p>	<p>2006; December 13, 2007; September 27, 2011; January 18, 2017; December 2, 2019; March 5, 2020; <u>April 28, 2023</u></p>
Case Assignments	<p>The Board ALJs (excluding Robin Parker and Anthony Skrocki) will preside over merits hearings. To preserve the random selection of ALJs as well as the even distribution of cases, ALJs will be assigned on a rotational basis at the Hearing Readiness Conference utilizing an assignment log similar to the Merits Judge Substitution Log adopted by the Board at its January 8, 2003, meeting. If the judge selected to preside over the next hearing is not available, the Board will attempt to schedule the merits hearing with the next Board ALJ on the log. If for any reason no judge is available, the hearing will be scheduled with an OAH Judge. The new ALJs will be assigned utilizing this process.</p> <p>On an interim basis, ALJs will be assigned based upon a Merits and MSC Judge Assignment Log. All of the ALJs (Archibald, Lopez, and Prod until they resigned) were assigned to the respective logs. The effectiveness of this interim system was reported at the March 8, 2006, General meeting. Diana Woodward Hagle was added to the assignment logs, as was Judge Taylor until his contract expired. Judge Wong requested that she be added to the MSC Log.</p>	<p>September 30, 2004; April 21, 2005</p> <p>November 16, 2005; April 5, 2006; September 28, 2006</p>

CATEGORY	POLICY	DATE
Case Assignments -continued-	<p>The assignment logs were updated as follows:</p> <ul style="list-style-type: none"> ▪ If an ALJ's case resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ is inserted first in the rotation so that he or she would be the next ALJ to receive the first opportunity to preside over a merits hearing. ▪ If an ALJ must decline presiding over a merits hearing because he or she was they were the Mandatory Settlement Conference ALJ, then the ALJ is inserted back into the rotation. Once the merits hearing in which the conflict arose is assigned; the ALJ with the conflict would be the next judge to receive the first opportunity to preside over a merits hearing. <p>Merilyn Wong, on an interim basis, was designated the Mandatory Settlement Conference ALJ starting in June 2016. In November 2017, she was designated the permanent Mandatory Settlement Conference ALJ due to her success in settling protests. An Alternative MSC Judge Assignment Log was established in the event ALJ Wong is unavailable. Additionally, at ALJ Wong's request, she was taken off the Alternative Merits Judge Assignment Log and the Alternative Law & Motion Judge Assignment Log so her focus would be exclusively on settlement. <u>Judge Wong passed away in October 2024.</u></p> <p>The Office of Administrative Hearings ("OAH") was added to the "Merit Hearings Judge Assignment Log" next in line to preside over a protest hearing between a franchisee and franchisor. For a period not to exceed three years, the Executive Director has discretion to assign additional merits hearings to OAH outside the current assignment log. Prior to submitting a hearing to OAH that is outside the normal rotation, the Executive Director will seek Executive Committee permission. The use of OAH in general and any additional assignments will be reported to the Board in the Executive Director's Report.</p>	<p>February 4, 2014</p> <p>June 28, 2016, January 18, 2017, July 19, 2017, November 7, 2017</p> <p>January 25, 2023; April 28, 2023</p>

CATEGORY	POLICY	DATE
Case Assignments -continued-	<p>The Executive Director has discretion to remove an ALJ from an assignment log based on performance. Any proposed changes would be discussed in advance with the Policy and Procedure Committee. If appropriate, updates would be reported to the Board in the Executive Director's Report or in closed Executive Session as a personnel matter.</p> <p>For new protests starting with Protest No. PR-2832-23, the Board adopted a numerical designation system. The ALJ is assigned based on the last digit of the Protest No. The first protest in numerical order is always the lead case in consolidated matters and would be used for ALJ assignments. In the event a Board ALJ is not available, OAH would be the default. The approved numerical designation is:</p> <p style="margin-left: 40px;">1, 6 OAH 2, 7 Pipkin 3, 8 OAH 4, 9 Nelsen 5, 0 Woodward-Hagle</p> <p>For existing protests, ALJs will continue to be assigned at the Hearing Readiness Conference using the Merit Hearings Judge Assignment Log on a rotational basis.</p>	<p>April 28, 2023</p> <p>September 21, 2023</p>
Cited Proposed Decisions/ Rulings/Orders	Historically, the Board staff has prepared two versions of proposed decisions, rulings, and orders. One version contained citations to the record and the other version did not. The Board staff will prepare only one version of proposed decisions, rulings, and orders that contains citations to the record. Additionally, the following sentence will be included in all Board issued proposed decisions, rulings, and orders: "The references to testimony, exhibits, or other parts of the record contained herein are examples of the evidence relied upon to reach a finding, and are not intended to be all-inclusive."	January 26, 2006
Hearing Officer Selection	<p>The following process shall be used in the examination and selection of Board Hearing Officers.</p> <p>(1) The civil service testing panel for the hearing officer classification shall consist of, at a minimum,</p>	December 8, 1998; November 28, 2000

CATEGORY	POLICY	DATE
Hearing Officer Selection -continued-	<p>one member of the Board, one Board employee approved by the Board, the Department's designated representative from its Human Resources Branch (who serves as panel chairman), and a public member assigned from a list certified by the State Personnel Board.</p> <p>(2) Once the civil service list for the classification has been certified by the Department, the actual hiring interview will be conducted by the Administration Committee of the Board. (The Board may also wish to appoint an alternate Board member to this committee in the event that one of the committee members is unavailable for the hiring interview). This committee may request that a member of the Board's executive staff participate in this process as well.</p> <p>(3) Once the hiring committee selects one or more qualified and desirable applicants from the list, these individual(s) will be requested, if practical, to attend the next scheduled General Meeting of the Board, at which time they will be asked to make a brief presentation to the Board concerning their qualifications and experience. Members of the Board will be given an opportunity to ask questions of these applicants. The Board members will then vote on whether to actually hire these individuals as hearing officers. If one or more of the applicants are hired, the Board will then modify the numerical designation on the hearing officer list to assign a number or numbers to the new hearing officers.</p>	
Reclassification of Hearing Officer to Administrative Law Judge	<p>The Hearing Officer series specification which includes Hearing Officer I, Hearing Officer II, and Chief Hearing Officer was changed to an ALJ class with two salary ranges, Range A and Range B. This change was necessitated by the passage of Assembly Bill 1718 (Chaptered September 22, 2003) that transferred the authorization granted to a hearing officer to an ALJ and deleted references to hearing officer in the Vehicle Code. Also, the responsibilities and duties assigned to incumbents of the Hearing Officer class were no longer an accurate representation. Implementation of this change will require approval of the State Personnel Board and the Department of Personnel Administration, which was completed September 2012.</p>	November 7, 2003

CATEGORY	POLICY	DATE
Separation of Powers	The Board rules prevent the ALJ at a settlement conference from presiding 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 (13 CCR § 551.11).	September 9, 1998
Source of Board Hearing Officers	The Board will utilize Board Hearing Officers (Administrative Law Judges) as opposed to judges from the Office of Administrative Hearings ("OAH") because it is more efficient, cost effective, and affords the parties an effective means to resolve disputes. Using Board Hearing Officers that have a full understanding of the franchise relationship, the automotive industry, terminology, practices, and the law, is of obvious benefit to the Board and litigants. Other factors include: (1) costs for hearing officers, court reporters, and transcripts; (2) turnaround time for hearing dates and proposed decisions or rulings; and (3) unlike the Board, OAH is not involved in discovery unless the parties file a motion requesting its involvement.	August 20, 1996; December 8, 1998; May 25, 2000 — Business, Transportation & Housing Agency, Audit Recommendation 4

CASE PROCESSING

CATEGORY	POLICY	DATE
Administrative Procedure Act	<p>To ensure compliance with the Administrative Procedure Act, the Board has adopted the following discretionary procedures:</p> <ul style="list-style-type: none"> Alternative Dispute Resolution (Government Code section 11420.10, et seq.), which allows the Board, with the consent of all the parties, to refer a dispute to mediation by a neutral mediator, binding arbitration by a neutral arbitrator, or nonbinding arbitration by a neutral arbitrator. Informal Hearings (Government Code section 11445.10, et seq.), which allows the Board to permit informal hearings in certain limited instances. The informal hearing procedure provides a forum in the nature of a conference in which a party has an opportunity to be heard by the presiding officer. Declaratory Decisions (Government Code section 11465.10, et seq.), which provides for issuance of a declaratory decision as to the applicability to specified circumstances of a statute, regulation, or decision within the primary jurisdiction of the Board. 	August 21, 1997

CATEGORY	POLICY	DATE
Case Management Procedures	In an effort to ensure the expeditious management of protests and petitions, staff will refer, as necessary, a specific matter to the appropriate ALJ for review, and/or staff will report the status of the case to the Board as an agenda item at a scheduled Board meeting to allow for Board action and the opportunity for the parties to appear and comment. In an effort to ensure that protest matters proceed to hearing within the statutorily mandated time frame, the Board staff is directed to adhere to the mandates of Vehicle Code section 3066, which provides that hearings may not be postponed beyond 90 days from the Board's original order setting the hearing date, and Title 13 of the California Code of Regulations section 592 which provides that hearings may not be continued within 10 days of the date for hearing except in extreme emergencies. Any request for a continuance which would violate the above referenced sections or when it appears that it would be beneficial to the expeditious management of the case will be referred to the assigned "merits" ALJ for review. Petition matters that do not proceed to hearing within a reasonable period of time will also be referred to the assigned "merits" ALJ for review.	April 27, 2001
Case Assignment Reports	In order to ensure that the mechanism for assigning cases to Board ALJs is working fairly and efficiently, the Board will receive periodic updates on the status of assigning cases to Board ALJs.	September 12, 2000; November 28, 2000
Review of Case Status	The legal staff will review the status of all cases that are at least one-year old no less frequently than once each quarter. The parties will be contacted informally, or a telephonic Status Conference will be noticed to ascertain what action, if any, the Board can take to resolve the dispute.	July 12, 1996
ADMINISTRATION		
Acceptance of Credit Card Payments	The Board will allow the acceptance of credit card payments for all Board fees and costs subject to Master Service Agreements (13 CCR § 553.40). In 2022, the Board began allowing online credit card payments. In the absence of a vendor contract, credit card payments cannot be accepted.	April 26, 2002; February 2005
Administrative Law Judge Guide	The Board will establish and maintain a <i>New Motor Vehicle Board Administrative Law Judges'</i>	April 26, 2002; March 11, 2003;

CATEGORY	POLICY	DATE
Administrative Law Judge Guide -continued-	<i>Benchbook</i> . To timely revise the <i>Benchbook</i> , which is an internal training manual, future updates be reported on the Executive Director's Report.	March 9, 2004; March 8, 2005; March 8, 2006; March 28, 2007; May 2, 2008; April 23, 2009; June 15, 2010; December 13, 2011; March 20, 2012; March 13, 2013; July 15, 2014; March 25, 2015; February 10, 2016; July 19, 2017; March 13, 2018; November 7, 2022
Annual Board Fee in Light of Two-Year License Renewal	The Annual Board fee of \$225.00 for dealers and \$0.338 per vehicle sold in California, with a minimum of \$225.00, for manufacturers and distributors will remain unchanged in light of the Department of Motor Vehicles two-year Occupational License renewal. ¹⁰	September 21, 2005
Annual Board Fee Waiver Criteria	The Board will exempt from collection of its annual fee all manufacturers or distributors of motor vehicles (including motorcycles, recreational vehicles, and all-terrain vehicles) within the purview of its jurisdiction who do not have independent dealers in California or do not sell vehicles in California (13 CCR § 553(b)). Although a manufacturer or distributor may be exempt from collection of the annual Board fee, the Board will continue to exercise jurisdiction over these licensees. An annual questionnaire (Data Summary Form) will be sent to all exempted licensees concerning whether they have dealers or sold vehicles in California during the prior calendar year.	September 6, 2001; see also amendment to 13 CCR § 553(b) operative September 2003
Arbitration Certification Program Fee Collection	The Board will exercise its discretion to collect or not collect fees when the amount to be collected is nominal, and provide the Department of Consumer Affairs, Arbitration Certification Program with an accounting of the manufacturers and the amounts owed but not collected as a result of the Board exercising its discretion.	January 31, 2007

¹⁰ At its February 4, 2011, General Meeting, the members approved reinstating the Annual Board Fee per manufacturer or distributor to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee to \$300.00. This proposed rulemaking was effective March 30, 2012.

CATEGORY	POLICY	DATE
Audit Compliance Officer	The Board has designated the General Counsel ¹¹ to service as its Audit Compliance Officer to ensure that all facets of the 1996 Business, Transportation & Housing Agency Performance Audit are complied with. This includes the Corrective Action Plan Committee's proposal which was adopted by the Board at its December 8, 1998, General meeting, and the Audit Review Committee's recommendations concerning restructuring the senior management positions which were adopted at the May 25, 2000, General meeting. This report was made an exception report.	November 20, 2008; May 26, 2011
Budget Process	The Fiscal Committee will meet each May to review the Board's proposed budget. Consideration of the budget will be agendaized each June. This enables the Board to take a more active role in the budget process.	September 7, 2007
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency	<p>The Audit recommended that "Delegation authorities should be formally adopted by the Board. Delegations which include signature authority should specify transaction type or dollar limits where applicable and should distinguish between the granting of powers reserved to the Board and duties arising from existing statutory provisions already reserved to individuals." In November 1996, the Budget and Finance Committee (Joe Drew and Lucille Mazeika) prepared an analysis of the duties of the Board members and staff that was adopted by the Board at its March 18, 1997, General Meeting. The Committee considered all of the duties of the Board and staff, and recognized those which, by statute or regulation, are retained by the Board or are already delegated to designated individuals.</p> <p>At its November 20, 2008, General Meeting, the members adopted revised delegations with updated statutory language and formal Board delegations of duties that occurred at noticed meetings.</p> <p>At its September 10, 2009, General Meeting, the members adopted the revised delegations that included minor grammatical changes. Additionally, the "Administrative Duties" delegation pertaining to</p>	<p>March 18, 1997 - Business, Transportation & Housing Agency Audit Finding 15</p> <p>November 20, 2008</p> <p>September 10, 2009</p>

¹¹ See footnote 1.

CATEGORY	POLICY	DATE
<p>Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-</p>	<p>“Procurement” was revised to delegate to the Executive Director “the authority to procure any necessary equipment, supplies, and services up to the amount budgeted in a line item of the Board’s approved budget. If, due to extenuating circumstance, the necessary expenditure exceeds the amount budgeted, the Executive Director shall contact the members of the Fiscal Committee by telephone and discuss this matter. The Committee may authorize the procurement which may then be ratified by the full Board at its next regularly scheduled meeting.”</p>	
	<p>This matter was made an exception report.</p>	<p>May 26, 2011</p>
	<p>Senate Bill 155, effective January 1, 2014, made a number of non-substantive and substantive changes that resulted in updated delegations being adopted at the July 15, 2014, General Meeting.</p>	<p>July 15, 2014</p>
	<p>Effective January 1, 2016, a number of changes were made to separate provisions pertaining to Article 5 RV protests from Article 4 vehicle protests, and Article 6 was added to allow an association to file an export or sale-for-resale prohibition policy protest on behalf of two or more impacted dealers (Assembly Bills 759 and 1178). The revised delegations reflecting these changes were adopted at the February 10, 2016, General Meeting.</p>	<p>February 10, 2016</p>
	<p>Effective January 1, 2017, Vehicle Code section 3065 was amended (Assembly Bill 287) to specify that warranty obligations include all costs associated with the disposal of hazardous materials that are associated with a recall repair.</p>	<p>January 18, 2017</p>
	<p>Article 6 of the Vehicle Code was repealed effective January 1, 2019. The Board revised its Legislative Policy, which contained three changes that resulted in updated delegations to the Executive Director.</p>	<p>June 7, 2019</p>
	<p>Effective January 1, 2020, Assembly Bill 179 re-lettered Vehicle Code section 3050, repealed Article 3 Appeals (Sections 3052-3058), added the</p>	<p>February 16, 2021</p>

CATEGORY	POLICY	DATE
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-	<p>methodology for calculating a franchisee's "retail labor rate" or "retail parts rate" in Section 3065.2, added two new protests in Sections 3065.3 and 3065.4, restored the Board's authority to hear Article 6 Export or Sale-for-Resale Prohibition Policy protests and made many conforming changes. Updates were made to reflect Dawn Kindel's promotions to Staff Services Manager II and Robin Parker's promotion to Chief Counsel.</p> <p>Effective January 1, 2023, Assembly Bill 2956 deleted obsolete references to appeals in Section 3008. (Stats. 2022, Ch. 295) Updates were made reflecting the Executive Director's temporary discretion to assign additional merits hearings to OAH outside the current assignment log.</p> <p>Updates were made to reflect the following:</p> <ol style="list-style-type: none"> 1. Discretion granted to the Executive Director to remove an ALJ from an assignment log based on performance. 2. Recruitment and hiring practices should be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination. 3. The Ad Hoc Committee on Equity, Justice and Inclusion will review all new and revised policies prior to Board action in order to further institutionalize equity within Board programs. 4. Effective January 1, 2024, Assembly Bill 473 added three new protests to Vehicle Code section 3065.3. 5. The Board adopted Strategic Plan June 2024-30. 6. The Executive Director was granted the discretion to take action responsive to the objectives in the Strategic Plan. 7. Personnel duties in the Delegation of Administrative Duties were updated to reflect the newly created Assistant Director and Equity Officer position. 	<p>April 28, 2023</p> <p>August 9, 2024</p>
Delegation of Authority Concerning Promulgating Regulations	The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the	April 26, 2002

CATEGORY	POLICY	DATE
Delegation of Authority Concerning Promulgating Regulations -continued-	<p>Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.</p> <p><u>The Board adopted proposed regulations increasing the dealer licensing fee to \$425 and the per vehicle fee to \$.65 for manufacturers and distributors with a minimum of \$425. If necessary, during the rulemaking process, the Board granted the staff discretion in consultation with the Executive Committee to reduce the fee to any number between \$400 and \$425 and \$.60 and \$.65. If this occurs, staff will bring this matter to the full Board at its next meeting.</u></p>	<u>November 1, 2024</u>
Document Requests	<p>The Board will charge fees for document requests that are consistent with Evidence Code section 1563, and all fees for document requests that total \$10.00 or less (less than 40 pages and less than 15 minutes of actual labor) will be waived by the Board, subject to review and approval by the Executive Director.</p> <p>The statutory references to the California Public Records Act were updated to reflect the reorganization and recodification in Government Code section 7920.000, et seq.</p>	<p>October 22, 1996; September 6, 2001; December 13, 2006</p> <p>January 25, 2023</p>
Document Retention Policy	<p>The Board adopted Document Retention Policy:</p> <ul style="list-style-type: none"> ▪ The Board's judicial and administrative case files will be retained in their entirety, including exhibits and transcripts, at the Board's offices for a period of ten years after the case is no longer active. ▪ After the expiration of the ten-year period, all Final Decisions along with all briefs submitted at the close of the administrative record will be separately retained as permanent public records and stored at the Board's offices. The remainder of each file, i.e., exhibits and transcripts, will then be confidentially destroyed. 	October 29, 2002

CATEGORY	POLICY	DATE
Document Retention Policy -continued-	<ul style="list-style-type: none"> Records of consumer complaints that are received by the Mediation Services Program will be retained for three years after the case is closed followed by confidential destruction. Administrative records including, but not limited to, budget reports, travel expense claims, purchase agreements, and property survey reports will be retained, in the Board's offices for eight years from the end of the fiscal year in which the document was prepared, followed by confidential destruction. Employee personnel files, which include documents relating to health benefits, payroll deductions, performance appraisals, and the like, will be retained for eight years beyond separation followed by confidential destruction. 	
Electronic Public Mailing List	The Board will maintain a permanent Electronic Public Mailing List.	September 6, 2001
Employee Recognition	The Board will utilize an Employee Recognition Award Program to recognize staff members for their outstanding accomplishments. On at least an annual basis, employee nominations based on merit are submitted to the Board Development Committee and a recipient is selected in coordination with the Executive Director. The Employee Recognition Award program was renamed the "Solon C. Soteras Employee Recognition Award".	July 18, 2000; September 30, 2004; March 8, 2006
Facsimile Document Requests	There will be no charge for document requests sent via facsimile. However, if an individual required an excessive number of documents be sent via fax, then he or she they could be referred to an attorney support service.	December 13, 2006
Financial Reports	In order to keep the Board apprised of its financial condition, the Board will receive quarterly financial updates at regularly scheduled Board meetings.	May 25, 2000; July 18, 2000
Information Security	The Executive Director is the Liaison Information Security Officer and responsible for ensuring compliance with information security procedures. This ensures that the Board complies with the Government Code that requires each agency have an officer who is responsible for ensuring that the organization's systems and procedures are in compliance.	August 20, 1996; December 12, 2000

CATEGORY	POLICY	DATE
Informational Materials	The Board will establish and maintain a <i>Guide to the New Motor Vehicle Board</i> and any necessary related materials. (February 12, 1997 - Business, Transportation & Housing Agency Audit Recommendation 13)	February 26, 1999; September 6, 2001; December 5, 2002; December 11, 2003; December 16, 2004; January 26, 2006; January 31, 2007; February 11, 2008; April 23, 2009; February 4, 2010; September 27, 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; March 5, 2020; February 16, 2021; March 30, 2022; April 28, 2023; April 25, 2024
	The Board will establish and maintain an <i>Informational Guide for Manufacturers and Distributors</i> that assists factory personnel in complying with California's franchise laws including the statutorily required notices.	September 6, 2001; January 8, 2003; March 9, 2004; January 26, 2005 and 2006; January 31, 2007; February 11, 2008; April 23, 2009; February 4, 2010 and 2011; March 20, 2012; January 22, 2013; April 9, 2014; February 11, 2015; February 10, 2016; January 18, 2017; January 24, 2018; January 24, 2019; March 5, 2020; February 16, 2021; March 30, 2022; January 25, 2023; April 25, 2024

CATEGORY	POLICY	DATE
Informational Materials -continued-	The Board will establish and maintain an <i>Export or Sale-for-Resale Prohibition Policy Protest Guide</i> that assists associations, as defined, in filing a Vehicle Code section 3085 protest.	March 5, 2020; February 16, 2021; March 30, 2022; January 25, 2023; April 25, 2024
Internal Board Audits	In order to ensure that the Board is scheduled for audits at predetermined fixed intervals, the Board will be considered one of the divisions of DMV for purposes of scheduled compliance audits.	February 12, 1997
Legislative Committee	<p>A Legislative Committee was created. The composition is the Executive Committee unless otherwise designated by the Board President. The Legislative Committee will provide CalSTA with its own analysis, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The Committee will be provided a copy of the analysis and fully briefed.</p> <p>The Committee will continue to provide the Department with bill analyses at the Department's request, drafted by staff counsel and approved by the Committee on any Legislation of Special Interest. If there is insufficient time for Committee approval, the Executive Director is delegated the power to approve the analysis. The committee will be provided a copy of the analysis and fully briefed.</p> <p>In the bill analyses provided to CalSTA, the Committee will not take a formal position on any bill, with the exception of Legislation of Special Interest that proposes to drastically increase or reduce the Board's statutory authority and/or workload or intends to eliminate the Board. Absent CalSTA approval, the Committee will not publicly take a position on any bill.</p> <p>The Committee delegates to the Executive Director the ability to discuss pending Legislation of Special Interest with stakeholders or sponsors regarding technical input without prior Committee approval.</p>	June 7, 2019

CATEGORY	POLICY	DATE
Legislative Committee -continued-	<p>A Legislative Committee analysis will not be subject to disclosure under the Public Records Act.</p> <p>The statutory references to the California Public Records Act were updated to reflect the reorganization and recodification in Government Code section 7920.000, et seq.</p>	January 25, 2023
Legislative Policy	<p>The Board staff will provide technical and procedural advice to stakeholders on pending legislation. The Board will participate in industry discussions of legislation, if requested. This will ensure that the Board explains its operations and helps the parties better understand what the fiscal and operational ramifications, if any, will be. The full Board will be apprised of legislation of both special and general interest (as defined) at noticed Board Meetings. Absent CalSTA approval, the Board would not publicly take a position on any bill.</p>	August 20, 1996 June 7, 2019
Licensees for Purposes of Collecting Annual Board Fees	<p>In an effort to ensure those entities that can benefit from the Board's assertion of jurisdiction are properly assessed fees, those licensees that manufacture or distribute products that are legally outside of the Board's jurisdiction because they do not produce motor vehicles regularly used on highways, would be eliminated from the Board's jurisdiction for purposes of collecting the annual Board fee (13 CCR § 553).</p>	April 27, 2001
Mission and Vision Statements	<p>The Board's mission is: To enhance relations between dealers and manufacturers throughout the state by resolving disputes in the new motor vehicle industry in an efficient, fair and cost-effective manner.</p> <p>The Board's vision is: To demonstrate professionalism, integrity, and accountability in securing fair resolutions to motor vehicle industry disputes.</p>	<p>March 6, 2001; April 24, 2003; April 22, 2004; March 8, 2005; March 8, 2006; March 28, 2007; June 26, 2008; April 24, 2009; June 5, 2009; March 23, 2010; March 29, 2011; March 20, 2012; May 22, 2012; March 13, 2013; April 9, 2014; March 25, 2015; March 16, 2016; March 15, 2017; March 13, 2018; June 7, 2019; December 2, 2019; December 7, 2021</p>

CATEGORY	POLICY	DATE
Out-of-State Travel	The Board will approve the budgetary allotment for and participation in any out-of-state travel. It will review all out-of-state travel proposals prior to the time the requests for out-of-state travel are submitted to Agency. Prior Board review and approval will also be obtained when any previously approved out-of-state trip is modified as to time, individuals traveling, or destinations.	July 12, 1996 - Business, Transportation & Housing Agency Audit Recommendation 19
Performance Rating Criteria	Formalize performance appraisal criteria for the Executive Director position.	September 16, 2020, General Meeting
Proposed Stipulated Decisions and Orders (Confidential, Filed under Board Seal)	<p>If the parties have jointly agreed that the terms of a Proposed Stipulated Decision and Order are confidential and should be maintained under Board seal to affect the agreed upon terms and conditions, then that is the criteria used by the Board.</p> <p>The statutory references to the California Public Records Act were updated to reflect the reorganization and recodification in Government Code section 7920.000, et seq.</p>	<p>June 7, 2019</p> <p>January 25, 2023</p>
Recruitment and Hiring Practices (Bilingual Employees)	Recruitment and hiring practices should be designed and implemented with the goal of filling at least 44% of Board public contact positions with bilingual employees who have passed the Department of Motor Vehicles' Bilingual Verbal Proficiency Examination.	September 21, 2023
Statutorily Mandated Schedules or Formulas	In light of the amendments to Vehicle Code section 3065 (Assembly Bill 179, ch. 796, effective January 1, 2020), the Board revised its existing policy to provide for the return of an Annual Notice to educate manufacturers and distributors concerning their filing requirements pursuant to Vehicle Code sections 3064/3074 and 3065/3075.	December 13, 2007; December 2, 2019
<u>Strategic Plan July 2024 – June 2030</u>	<u>The Strategic Plan objectives are: (1) Improve outcomes for all motor vehicle consumers; (2) Contribute to the advancement of the CalSTA Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity; (3) Transform our organization to become more resilient and conserve limited resources; and (4) Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders. The Executive Director was granted discretion to take action responsive to these objectives.</u>	<u>April 25, 2024</u>

CATEGORY	POLICY	DATE
Transcript Policy	<p>For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and OAH, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.</p> <p>In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the Board and OAH, if applicable, with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.</p> <p>For instances in which an ALJ or staff deem reporting services necessary, the above policy would not apply. The Board would be responsible for scheduling the court reporter and incur all associated fees and costs.</p>	September 21, 2023
Website	On the Board's website, consumers can access the Board's Consumer Mediation Pamphlet in Spanish.	September 21, 2005
William G. Brennan Hearing Room	In remembrance of the Board's previous Executive Director, William (Bill) G. Brennan, who passed away November 2, 2017, the Board renamed Hearing Room #1 The "William G. Brennan Hearing Room" as a symbolic gesture to solidify his legacy.	March 13, 2018



Memorandum

Date : FEBRUARY 3, 2025

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER
JASON A. ROSE**

**Subject : ANNUAL REPORT ON THE ASSIGNMENT OF CASES TO
ADMINISTRATIVE LAW JUDGES**

Annually, the staff reports on the assignment of cases to the Board's Administrative Law Judges (ALJ). The hearings and settlement conferences are counted by the case and not by the occurrence. For example, if the hearing on a motion to dismiss resumed three times, only a single hearing is counted. Similarly, if six protests were consolidated to rule on discovery objections, the single hearing is counted. In addition, Pre-Hearing Law and Motion in relation to a merits hearing, such as a motion in limine, is not counted separately.

The table below illustrates the matters by category that were heard by each ALJ or Hearing Officer in 2024.

Administrative Law Judge/ Hearing Officer	Mandatory Settlement Conference	Law and Motion Hearing	Discovery Hearing	Merits Hearing
Bayne	N/A	0	1	N/A
OAH	0	0	0	0
Nelsen	0	2 ¹	0	1 ²
Parker	1 ³	0	0	N/A

¹ In Protest No. PR-2826-23 *KPAUTO, LLC, d/b/a Putnam Ford of San Mateo v. Ford Motor Company*, Judge Nelsen presided over Protestant's Motion to Compel at the conclusion of the merits hearing on August 16, 2024. Judge Nelsen presided over Protestant's request to add post-hearing deposition designations on September 13, 2024, and November 7, 2024.

² Judge Nelsen presided over a seven-day merits hearing in *Putnam Ford of San Mateo*. The record was opened on November 7, 2024, to add additional exhibits.

³ On October 28, 2024, the Executive Committee designated Robin Parker the Board's hearing officer for Mandatory Settlement Conferences on an emergency basis given the unexpected passing of Administrative Law Judge Marilyn Wong. This designation will be reviewed by the full Board at the February 28, 2025, General Meeting. On November 20, 2024, Robin presided over a settlement conference in Protest No. PR-2855-24 *BWNVT Motors, LLC dba Serramonte Ford v. Ford Motor Company*. This protest was settled and dismissed.

Assignment of ALJs

Page 2

February 3, 2025

Administrative Law Judge/ Hearing Officer	Mandatory Settlement Conference	Law and Motion Hearing	Discovery Hearing	Merits Hearing
Pipkin	0	1 ⁴	0	0
Skrocki	N/A	2 ⁵	0	N/A
Wong	3 ⁶	N/A	N/A	N/A
Woodward-Hagle	0	1 ⁷	0	0 ⁸

Hearing Type	2024 Total
Law and Motion	6
Discovery	1
Mandatory Settlement Conference	4
Merits Hearing	1
Merits Hearing Days	7

This matter is for information only at the February 28, 2025, General Meeting.

If you have any question or require additional information, please contact me at (916) 244-6774, Robin at (916) 244-6776, or Jason at (916) 818-2962.

cc: Ardashes Kassakhian, President

⁴ Judge Pipkin heard a Motion to Adjourn Hearing and Scheduling Order in Protest No. PR-2821-23 *Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC*. Due to medical reasons, ALJ Pipkin was not able to preside over the November 12, 2024, merits hearing. This matter will be heard by the Office of Administrative Hearings.

⁵ On October 3, 2024, Judge Skrocki presided over a Motion to Dismiss hearing in Protest No. PR-2812-22 *San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America*. On November 22, 2024, he presided over a Motion to Dismiss hearing in Protest No. PR-2859-24 *Raceway Ford, Inc., dba Raceway Ford v. Ford Motor Company*. Both motions were denied.

⁶ ALJ Wong presided over Mandatory Settlement Conferences in *Liberty Chevrolet*, Protest No. PR-2844-23 (consolidated) *Knight Sunrise Fontana LLC v. Ford Motor Company*, and Protest No. PR-2856-24 *IVS NorCal LLC d/b/a Kuhn INEOS Grenadier v. INEOS Automotive Americas, LLC*.

⁷ On August 5, 2024, Judge Woodward Hagle presided over a Motion to Strike in Protest No. PR-2803-22 *KM3G Inc. d/b/a Putnam Kia of Burlingame v. Kia America, Inc.* after she presided over the merits hearing noted below.

⁸ The merits hearing in Protest No. PR-2803-22 *KM3G Inc. d/b/a Putnam Kia of Burlingame v. Kia America, Inc.* resumed on February 12, 2024, for four days and the record was opened to add additional exhibits on June 13, 2024. These dates are not counted in the total as this was reflected in the 2024 update as the merits hearing was initially heard on October 9-13, 2023.



Memorandum

Date : FEBRUARY 3, 2025

To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER

From : TIMOTHY M. CORCORAN
ROBIN P. PARKER

Subject : CONSIDERATION OF THE *EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST GUIDE* (VEHICLE CODE SECTION 3085, et seq.)

The *Export or Sale-for-Resale Prohibition Policy Protest Guide* is reviewed annually to ensure it complies with recent statutory and regulatory amendments. The Board composition and staff updates are reflected in the attached Guide. The following additional edits are highlighted yellow in underline and strikeout font:

- The references to paying filing fees by credit card has been deleted on pages 3 and 4. In the absence of a vendor contract, credit card payments cannot be accepted.
- Gender specific language was replaced with gender neutral language in the Amicus Curiae Briefs section on page 4.

This matter is being agendized for discussion and consideration at the February 28, 2025, General Meeting.

If you have any question or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

***Export or Sale-For-Resale Prohibition
Policy Protest Guide***

Vehicle Code Section 3085, et seq.

February 2025

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

2415 1st Avenue, MS L242
Sacramento, California 95818
Phone: (916) 445-1888
E-mail: nmvp@nmvp.ca.gov
Website: <http://www.nmvp.ca.gov>

State of California
GAVIN NEWSOM, GOVERNOR

California State Transportation Agency
TOKS OMISHAKIN, SECRETARY

BOARD MEMBERS

Public Members
KATHRYN ELLEN DOI
ARDASHES (ARDY) KASSAKHIAN
BISMARCK OBANDO
JACOB STEVENS

Dealer Members
ANNE SMITH BOLAND
ASHLEY DENA
BRADY SCHMIDT

EXECUTIVE STAFF

TIMOTHY M. CORCORAN
Executive Director
KIMBERLEE VAYE
Assistant Director and Equity Officer

LEGAL STAFF

ROBIN P. PARKER
Chief Counsel
JASON A. ROSE
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PREAMBLE

The materials contained herein are intended to be informative and not advisory, limited in scope, and are not intended to be a substitute for careful reading of the specific statutes and regulations that may apply to your particular situation.

All correspondence and protests should be sent to:

New Motor Vehicle Board
ATTN: Legal Department
2415 1st Avenue, MS L242
Sacramento, California 95818

Correspondence can also be sent via email at nmvp@nmvp.ca.gov. The telephone number of the Board is (916) 445-1888 and the website address is www.nmvp.ca.gov. Detailed information can be found on the Board's website. Please feel free to contact the Board's staff for further information.

All statutory references are to pertinent sections of the Vehicle Code unless otherwise specified. The full text of pertinent sections of the Vehicle Code is available on the Board's website or at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>. References to regulations are to Title 13 of the California Code of Regulations. The referenced sections will be noted in the following manner, for example, 13 CCR § 550, et seq. The regulations are also available on the Board's website or at the Office of Administrative Law's ("OAL") website (www.oal.ca.gov). Once you reach the OAL site, select California Code of Regulations. You will be taken to the California Code of Regulations and can search by title; the Board's regulations are in Title 13. As the Board is a quasi-judicial agency that holds administrative hearings, statutes comprising the administrative adjudication provisions of the Administrative Procedure Act ("APA"; Gov. Code § 11400 through 11529) are applicable and available at <http://leginfo.legislature.ca.gov/faces/codes.xhtml>.

The Board also publishes a *Guide to the New Motor Vehicle Board* which details Article 4 (cars, motorcycles, and ATVs) and Article 5 (recreational vehicles) protests and petitions. An *Informational Guide for Manufacturers and Distributors* is also published to assist manufacturers and distributors in clarifying California's vehicle franchise laws. Both guides are available free from the Board's offices at the above address, or can be accessed and downloaded from the Board's website at www.nmvp.ca.gov.

INTRODUCTION

Assembly Bill 179, (Stats. 2019, Ch. 796) effective January 1, 2020, was sponsored by the California New Car Dealers Association with essentially the same language that sunset on January 1, 2019. (Assembly Bill 1178 (Stats. 2015, Ch. 526)) This bill returns the Board's authority to hear export or sale-for-resale prohibition policy protests in Article 6 of the Vehicle Code and now sunsets on January 1, 2030.

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, may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch (herein "manufacturer" or "distributor") at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. (Veh. Code § 3085) The purpose of this publication is to familiarize the reader with this protest.

POWERS AND DUTIES IN GENERAL

The powers and duties of the Board are set out in Vehicle Code sections 3050 and 3051. As a quasi-judicial body, the Board has authority under Vehicle Code section 3050.1(a) to:

- Administer oaths;
- Take depositions;
- Certify to official acts; and,
- Issue subpoenas to compel attendance of witnesses and the production of documents.

Enforcement of Board Orders

There are provisions for sanctions and penalties for violating orders of the Board or the requirements of those sections of the Vehicle Code within the Board's authority. Obedience to subpoenas and the compliance with discovery procedures can be enforced by application to the Superior Courts. (Veh. Code § 3050.2(a)) Vehicle Code section 3050.2(b) gives the Executive Director authority, at the direction of the Board, upon a showing of failure to comply with authorized discovery without substantial justification, to dismiss a protest or suspend the proceedings pending compliance.

Mandatory Settlement Conferences

In a protest filed with the Board, the Board, its Executive Director, or an Administrative Law Judge¹ ("ALJ") may order a mandatory settlement conference. (Veh. Code § 3050.4) For any proceeding, the settlement conference judge is precluded from hearing the proceeding on the merits or other motions in the case without stipulation by the parties. (13 CCR § 551.11) The failure of a party to appear, to be prepared, or to have the authority to settle the matter at such a conference may result in the Board taking action adverse to that party. (Veh. Code § 3050.4)

¹ An Administrative Law Judge means an ALJ of the Board or the Office of Administrative Hearings. (13 CCR § 550(a))

EXPORT OR SALE-FOR-RESALE PROHIBITION POLICY PROTEST

Statutory Authority

Vehicle Code section 3050(d) provides for the Board to hear and decide a protest presented by an association challenging a policy of a manufacturer or distributor pursuant to Section 3085.

Filing a Protest

There is no specific statutory time period in the Vehicle Code within which to file a protest involving an export or sale-for-resale prohibition policy protest.

A protest is deemed filed upon its receipt by the Board via regular mail, email or facsimile,² or upon mailing of the protest, if it is sent by either certified or registered mail. Accordingly, it is suggested that all protests be emailed to the Board at nmvp@nmvp.ca.gov or mailed by certified or registered mail to 2415 1st Avenue, MS L242, Sacramento, CA 95818.

Manufacturer's or Distributor's Notice of Appearance

The respondent shall file a written notice of appearance within 15 days of receipt of the protest. (13 CCR § 585.1) Failure to timely file a notice of appearance shall result in the proceedings being suspended until such time as a notice of appearance is filed.

Filing Fee

A filing fee of \$200, which should be in the form of a check, ~~or money order or an authorized credit card charge~~ payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. Either the protestant or respondent may submit a request for a fee waiver. The Executive Director, upon a showing of good cause, may waive the \$200 filing fee (13 CCR § 553.40). Samples are available on the Board's website.

Interested Individuals

Pursuant to Vehicle Code section 3085.2, any interested individual may apply to the Board for permission to appear at the hearing on any protest for the purpose of submitting direct evidence concerning the issues raised in the protest.

Motion for Intervention

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 to intervene in a pending proceeding subject to the conditions set forth in 13 CCR § 551.13.

² An Association seeking to file a protest via facsimile (fax) is requested to contact the Board's legal staff in advance at (916) 445-1888 or nmvp@nmvp.ca.gov.

Challenge to Presiding Officer

A party may request disqualification of a Board member or an ALJ for cause prior to the taking of evidence by filing an affidavit stating the grounds for the request. (13 CCR § 551.1) Further, 13 CCR § 551.12(b) entitles a party, excluding an intervenor, in a Board proceeding to one disqualification without cause (peremptory challenge) of an assigned ALJ by filing the peremptory challenge with the Board no later than either 20 days from the date of the order of time and place of hearing identifying the ALJ or 20 days prior to the date scheduled for commencement of the hearing, whichever is earlier. (13 CCR § 551.12(b)(1)) Except for the convenience of the Board or for good cause shown, no hearing shall be continued by the filing of a peremptory challenge.

Amicus Curiae Briefs

The Board, its Executive Director, or an ALJ may, in ~~his or her~~ **their** discretion, allow the filing of amicus curiae briefs. (13 CCR § 551.13)

Required Elements of Protest

The required content of a protest under Vehicle Code section 3085 is as follows:

Content Requirements	Authority
Must be in writing and conform to the provisions of Article 6 commencing with 13 CCR § 593.1.	13 CCR § 583
The association shall simultaneously deliver a \$200 filing fee in the form of a check, or money order or an authorized credit card charge payable to the New Motor Vehicle Board, or a request for a fee waiver.	13 CCR § 553.40
The association shall serve a copy of the protest on the manufacturer or distributor and proof of service shall accompany the protest submitted to the Board.	13 CCR § 551.24

Determination of Protest

If there is a hearing, the association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The relief sought in this protest is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer or distributor violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association.

HEARING PROCEDURES

Pre-Hearing Procedure

Upon receiving a protest, the Board shall institute hearing proceedings similar to those of a formal civil trial, including the scheduling of various pre-hearing conferences, settlement conferences, arrangements for discovery, identification of witnesses, and so on. The Board may impose sanctions if a party fails to comply with the Board's discovery orders or fails to participate properly in a settlement conference.

Discovery

Pursuant to Vehicle Code section 3050.1, the Board may authorize the parties to engage in the civil discovery process. Discovery is limited to requests for depositions and demands for production of documents (Code Civ. Pro. § 2016.010, et seq.), with the exception of provisions for written interrogatories (Code Civ. Proc. § 2030.010). Section 551.6 of the Board's regulations implements and makes specific the Board's procedures for requesting depositions where the witness resides within California or outside of California.

Subpoenas

Authority for issuing subpoenas in Board proceedings is found in Vehicle Code section 3050.1 and 13 CCR § 551.2. Unlike the civil courts, the parties cannot issue their own subpoenas. On the request of any party, the Board, its Executive Director or an ALJ may issue subpoenas for the production of papers, records, and books by a witness or a deponent, and the appearance of a non-party witness or deponent. Hearing subpoenas are issued in accordance with 13 CCR § 551.2(b) and an affidavit is not required to support the request. For a hearing subpoena duces tecum, an affidavit must accompany the request.

Subpoenas for the attendance and testimony of a non-party deponent, or for a subpoena duces tecum for deposition of a non-party, are issued by the Board in accordance with Code of Civil Procedure section 2016.010, et seq., excepting the provisions of section 2020.210, subdivisions (a) and (b). (13 CCR § 551.2(c)) No affidavits are required. Counsel for the parties can issue notices of depositions to parties. (Code Civ. Proc. § 2025.010, et seq.) Subpoenas for out-of-state, non-party witnesses or deponents will be issued by the Board, but need to be enforced in the out-of-state court. (Code Civ. Proc. § 2026.010, et seq.)

Government Code section 11450.30 and 13 CCR § 551.2(e) permit a person served with a subpoena or a subpoena duces tecum to object to its terms by a motion for a protective order, including a motion to quash. The assigned ALJ would resolve the objection. The ALJ may make another order that is appropriate to protect the parties or the witness from unreasonable or oppressive demands, including violations of the right to privacy.

Following service of the subpoena on the witness or deponent, a copy of the subpoena and executed proof of service shall be filed with the Board. (13 CCR § 551.2(d))

Summary of Board Action

Hearings on protests filed pursuant to Vehicle Code section 3085, may be considered by the entire Board or may, at its discretion be conducted by one of the Board's ALJs. At the hearing, oral argument is heard, evidence is admitted, testimony is received, and a written decision is rendered. The procedures are described in detail in Vehicle Code section 3085.2. The Board, on receiving a protest, does the following:

Step	Action
1	By order fix a time within sixty (60) days of receipt of the protest.
2	Send a copy of the order to the manufacturer or distributor, the protesting association, and all individuals and groups that have requested notification by the Board of protests and decisions by the Board.
3	The Board or an ALJ designated by the Board presides over merits hearings on protests. (See also 13 CCR § 590)

NOTE: Vehicle Code section 3050(d) prohibits a dealer member of the Board from participating, hearing, commenting, advising other members upon, or deciding any matter that involves a protest filed "pursuant to Article 6 (commencing with Section 3085), unless all participants to the protest stipulate otherwise." Vehicle Code section 3085.2(c) states: "[a] member of the board who is a new motor vehicle dealer may not participate in, hear, comment, or advise other members upon, or decide, a matter involving a protest filed pursuant to this article [Article 6, i.e., protests filed by an association] unless all parties to the protest stipulate otherwise." These constraints ensure procedures that preclude any suggestion of bias or partiality of Board decisions.

Stipulated Decisions

The Board may adopt stipulated decisions and orders without a hearing pursuant to Vehicle Code section 3085.2 to resolve one or more issues raised by a protest filed with the Board. (Veh. Code § 3050.7)

Hearings Open to the Public; Protective Orders

Hearings before the Board or an ALJ designated by the Board are open to the public. For good cause shown, a party may seek an order closing all or part of the hearing or for other protective orders as set forth in Government Code section 11425.20 and 13 CCR § 551.20. The motion may be in writing or 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. The motion shall clearly identify the relief sought; the facts, circumstances, and legal authority; and shall include declarations or evidence that support the motion. The ALJ has discretion to allow an oral or written opposition to the motion. When ruling on the motion, the ALJ shall specifically set forth the facts, legal basis, and findings that support any protective order, order to seal parts of the record, or order to close the hearing to the public. The motion, opposition, and any resulting orders then become part of the record.

Failure to Appear at a Hearing

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 ALJ within five (5) days thereafter. The lack of such a showing may, in the discretion of the Board or the ALJ, be interpreted as an abandonment of interest by the party in the subject matter of the proceeding. (13 CCR § 589)

Decision of the Board

When matters are submitted to the Board for decision, or the Board receives a proposed decision of the ALJ, the Board shall take the matter under submission and conduct deliberations in executive session. The deliberations of the Board shall be in private and shall not be reported. (Veh. Code § 3008; 13 CCR § 588)

The decision of the Board shall be in writing, contain findings of fact, and a determination of the issues presented. The Board shall sustain, conditionally sustain, overrule, or conditionally overrule the protest. The decision becomes final when delivered or mailed to the parties and there are no provisions for reconsideration or rehearing. The Board shall act within 30 days after the hearing, within 30 days after the Board receives a proposed decision when the case is heard before an ALJ, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties. (Veh. Code § 3085.4)

Court Reporting and Transcripts of Board Proceedings

Under the authority of 13 CCR § 551.7 the Board may assume all or part of the cost of reporting any proceedings or may allocate costs entirely to one of the parties or apportion it among the various parties at its discretion. For all merits hearings and dispositive motions (those that result in a final determination of the protest before the Board), reporting costs will be allocated as follows:

Circumstances	Reporting Costs including Appearance Delivery Fees, and any other Costs	Transcript Fees for the Board and Office of Administrative Hearings (if applicable)
Hearings on the merits and dispositive motions	Participating parties	Participating parties
Other motions (venue, consolidation, continuation, etc.)	Requesting party or parties	Requesting party or parties
Pre-hearing conference	Requesting party or parties	Requesting party or parties
Discovery disputes (ruling on objections to production, motions to quash, etc.)	Requesting party or parties	Requesting party or parties

For merits and dispositive motion hearings, the parties, on an equal basis, are responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any

other costs, and the cost of certified hearing transcript(s) for the New Motor Vehicle Board and Office of Administrative Hearings, if applicable. Counsel are responsible for purchasing their own transcript(s), if desired.

In any other instance, where any party or parties deem reporting services necessary (including requests for reporter's appearance and for transcripts), the requesting party (or parties on any basis they agree upon) will be responsible for arranging reporter services and will be responsible for payment to the reporting service of the reporter's appearance fee, the delivery fee, and any other costs. The requesting party or parties will also be responsible for providing the Board and Office of Administrative Hearings, if applicable, with a certified copy of the transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

JUDICIAL REVIEW

Appeal to Superior Court

Judicial review of final orders and decisions of the Board may be sought in Superior Court pursuant to Code of Civil Procedure section 1094.5 via a petition for writ of administrative mandamus. A petition for writ of administrative mandamus questions whether the Board proceeded without or in excess of jurisdiction, whether there was a fair hearing, and whether there was any prejudicial abuse of the Board's discretion. Parties seeking judicial review of a final order or decision should refer to Vehicle Code section 3085.6.

APPENDIX

Sample Protest

The information contained in this sample form is intended to be informative and not advisory, limited in scope, and not intended to be a substitute for a careful reading of the specific statutes and/or regulations which may apply to your situation. For information on the format of filings with the New Motor Vehicle Board, see 13 CCR § 593.2, et seq. **Sample forms can be obtained from the Board's website, www.nmvb.ca.gov.**

Identification of Attorney or Party Representing Self:

In the top left-hand corner beginning with line one, place the name of the attorney (include state bar number) or individual representing itself, address, telephone number, and e-mail address. Single space this section. Skip one line then add which party is filing this document. In the case of a protest, the individual filing the protest is known as the "Protestant," whereas the individual responding would be the "Respondent."

1 _____ [name of attorney and state bar number, or name of party representing itself]

2 _____ [address]

3 _____ [telephone number and email address]

4 _____ Attorney for [Protestant] or In pro per [if party representing itself]

Leave the upper right-hand corner blank between lines 1 and 7 for the use of the Board.

Title of the Court:

On lines 8-9, place the title of the agency and the state in which the action is brought.

8 NEW MOTOR VEHICLE BOARD
9 STATE OF CALIFORNIA

Title of the Case:

Below the title of the court, flushed left, place the title of the case in the caption. The title of the case consists of the names of all of the parties.

Case Number:

The number of the case should be placed to the right of the title of the case or caption. Parties may leave the actual number blank until the Board has assigned the case a number.

Nature of Filing and Name of Action:

Below the number of the case, place the type of action filed along with the particular code section pursuant to which the action is filed.

Footer:

Except for exhibits, each paper filed with the Board must bear a footer in the bottom margin of each page, placed below the page number and divided from the rest of the document page by a printed line. The footer must contain the title of the paper or some clear and concise abbreviation in at least 10-point font.

11	In the Matter of the Protest of)	
)	
12	NAME OF ASSOCIATION,	)	Protest No. PR-
)	
13	Protestant,	)	PROTEST
)	
14	v.	)	[Vehicle Code section 3085]
)	
15	NAME OF MANUFACTURER OR)	
	DISTRIBUTOR,)	
16		)	[Dates of the hearing and any
	Respondent.	)	future pre-hearing or
17		)	settlement conferences]

Introduction:

State the name of the party filing the document, the type of document filed (e.g., protest, response, motion) and the applicable statutory authority.

20 Protestant, [Name of Association], files this protest under the provisions of
 21 California Vehicle Code section 3085, with reference to the following facts:

Body:

Using numbered paragraphs, state the allegations in a clear and chronological order.

22 1. Protestant is an association as defined in Vehicle Code section 3085(b) challenging
 the legality of an export or sale-for-resale prohibition policy of [manufacturer or distributor] on
 behalf of [identify two or more dealers subject to the challenged policy]. These dealers are
 subject to the policy being challenged pursuant to subdivision (y) of Vehicle Code section
 11713.3. Protestant's mailing address is [address] and telephone number is [telephone number].

2. Respondent is a licensed [manufacturer or distributor] authorized to do business and
 doing business in the State of California. Respondent's mailing address is [address] and
 telephone number is [telephone number].

3. Protestant is represented in this matter by [attorney/law firm], whose address and
 telephone number are [address and telephone number].

4. [Outline the particulars of the dispute].

5. Protestant and its attorneys desire to appear before the Board. The estimated length of
 hearing on this matter will take [number of days] to complete.

6. A Pre-Hearing Conference is requested.

7. WHEREFORE, Protestant prays for: (A declaration that an export or sale-for-resale
 prohibition policy of [manufacturer or distributor] violates the prohibitions of subdivision (y) of
 Vehicle Code section 11713.3.)

Dated:

Signed:



Memorandum

Date : FEBRUARY 3, 2025

**To : POLICY AND PROCEDURE COMMITTEE
JACOB STEVENS, CHAIR
KATHRYN ELLEN DOI, MEMBER**

**From : TIMOTHY M. CORCORAN
ROBIN P. PARKER**

Subject : CONSIDERATION OF REVISIONS TO THE *INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS*, WHICH OUTLINES THEIR OBLIGATION TO PROVIDE NOTICES, SCHEDULES, AND FORMULAS MANDATED BY THE CALIFORNIA VEHICLE CODE AND CIVIL CODE TO THE NEW MOTOR VEHICLE BOARD AND/OR IMPACTED DEALERS

The *Informational Guide for Manufacturers and Distributors* was most recently approved at the April 25, 2024, General Meeting. Each year it is thoroughly reviewed for accuracy. The Board composition and staff updates are reflected in the attached Guide. The following additional edits are highlighted yellow in underline and strikeout font:

- References to the California RV Show sponsored by the Recreation Vehicle Industry Association on pages 6, 8 and 23 have been deleted or changed to “an annual show sponsored by a national trade association of recreation vehicle manufacturers.”
- In the section on “What is a Certificate of Proposed Franchise (OL 124),” the sentence to contact Occupational Licensing on page 11 has been deleted as they do not provide phone assistance.

This matter is being agendized for discussion and consideration at the February 28, 2025, General Meeting.

If you have any question or require additional information, please contact me at (916) 244-6774 or Robin at (916) 244-6776.

cc: Ardashes Kassakhian, President



State of California

NEW MOTOR VEHICLE BOARD

***INFORMATIONAL GUIDE
FOR MANUFACTURERS
AND DISTRIBUTORS***

February 2025

STATE OF CALIFORNIA
NEW MOTOR VEHICLE BOARD

2415 1st Avenue, MS L242
Sacramento, California 95818
Phone: (916) 445-1888
Email: nmvb@nmvb.ca.gov
Website: www.nmvb.ca.gov



State of California
GAVIN NEWSOM, Governor

California State Transportation Agency
TOKS OMISHAKIN, SECRETARY

BOARD MEMBERS

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Executive Director
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ROBIN P. PARKER
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Senior Staff Counsel

February 2025

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INTRODUCTION

This Informational Guide has been prepared to assist manufacturers¹ and distributors in clarifying California's vehicle franchise laws and to familiarize the vehicle industry with the statutorily required notices, schedules, and formulas mandated by the Vehicle Code and Civil Code. The Guide consists of frequently asked questions and answers, and sample notices. It is designed for those factory personnel within a Market Representation Department, Dealer Development Department, or Legal Department.

The laws summarized below pertain to a manufacturer's or distributor's obligation to provide notices, schedules, and formulas mandated by the Vehicle Code and Civil Code, to the New Motor Vehicle Board (Board) and/or impacted dealers. For example, the proper procedure for noticing a termination of a franchise, modification of a franchise agreement, or clearing the market for an off-site sale are covered.

Questions concerning the procedural requirements of filing a notice, schedule, or formula, may be directed to the Board legal staff at (916) 445-1888 or nmvb@nmvb.ca.gov. The Board's website (www.nmvb.ca.gov) contains detailed information on the Board and contains links to California statutes and the California Code of Regulations.

LEGAL DISCLAIMER

The purpose of this Informational Guide is to familiarize the automotive industry with the statutorily required notices, schedules, and formulas mandated by the California Vehicle Code and Civil Code. The information contained herein is intended to be informative and not advisory, is limited in scope, and not intended as legal advice or as a substitute for careful reading of the specific statutes and regulations that may apply to a specific situation.

QUESTIONS AND ANSWERS

What Is the New Motor Vehicle Board?

The Board is located within the California Department of Motor Vehicles (DMV) with oversight provided by California State Transportation Agency formerly Business, Transportation & Housing Agency. The Board is a quasi-judicial administrative agency with independent authority to resolve disputes between franchised dealers and manufacturers of new vehicles (includes motorcycles, recreational vehicles, and all-terrain vehicles).²

Created in 1967, the Board, originally named the New Car Dealer's Policy and Appeals Board, was limited to hearing appeals³ from final decisions of the Director of DMV that adversely affected the occupational license of vehicle dealers or manufacturers. Legislation enacted in 1973 gave the Board its present name and implemented the statutory framework that created a forum to resolve disputes in an efficient, fair, and cost-effective manner.

¹ Throughout this Guide, the terms dealer and franchisee are used interchangeably, as are the terms manufacturer/distributor and franchisor.

² Effective January 1, 2004, the recreational vehicle industry, excluding park trailers and truck campers, was added to the list of licensees within the Board's jurisdiction. (See Veh. Code § 3070, et seq.) Since 1994, the Board has had jurisdiction over all-terrain vehicle dealers and manufacturers. Effective January 1, 2005, the all-terrain vehicle industry is licensed by the DMV. The reference contained herein to "vehicle dealer" or "franchisee" includes new motor vehicles, motorcycles, recreational vehicles, and all-terrain vehicles.

³ Effective January 1, 2020, the Board's jurisdiction to hear appeals was repealed. (Assembly Bill 179, ch. 796)

In keeping with its mission, most cases brought to the Board are resolved early in the process. Early dispute resolution improves relations between dealers and manufacturers, and reduces the need for costly, protracted litigation in areas where the Board has developed special expertise. A small number of cases proceed to a formal hearing on the merits of the dispute.

The Board also has a Consumer Mediation Services Program that attempts, through informal mediation, to resolve disputes between consumers and new motor vehicle dealers, and/or manufacturers.

What Are the Statutorily Required Notices, Schedules, or Formulas?

The Vehicle Code and Civil Code mandate that franchisors file notices, schedules, and formulas with the Board and/or impacted dealers in the following instances:

TYPE	STATUTE	NOTICE TO BOARD	NOTICE TO DEALER
Franchise Termination or Refusal to Continue (Non-Renewal)	Veh. Code § 3060(a) Veh. Code § 3070(a)	Yes	Yes
Franchise Modification or replacement*	Veh. Code § 3060(b) Veh. Code § 3070(b)	Yes	Yes
Establishment**	Veh. Code § 3062(a) Veh. Code § 3072(a)	Yes	Yes
Relocation**	Veh. Code § 3062(a) Veh. Code § 3072(a)	Yes	Yes
Off-Site Sale**	Veh. Code § 3062(c) Veh. Code § 3072(b)(3)	Yes	Yes
Delivery and Preparation Schedule	Veh. Code § 3064 Veh. Code § 3074	Yes	No
Warranty Reimbursement Schedule or Formula	Veh. Code § 3065 Veh. Code § 3075	Yes	No
Factory Ownership**	Veh. Code § 11713.3(o)	Yes	No
Dealer Development	Veh. Code § 11713.3(o)	Yes	No
Motor Vehicle Warranty Adjustment Programs	Civil Code § 1795.92	Yes	Yes

* The Board and dealer are noticed only if the modification or replacement would “substantially affect the franchisee’s sales or service obligations or investment.”⁴

** Notification is required only if there are dealers of the same line-make within the relevant market area. Vehicle Code section 507 defines relevant market area as “any area within a radius of 10 miles from the site of a potential new dealership.” This has been construed as air miles (“as the crow flies”).

Notices are required to be separately issued to each franchisee and separately issued for each line-make represented by a franchisee. This is consistent with the Vehicle Code and Section 593.1 of Title 13 of the

⁴ Despite the franchisor’s decision that the notices to the franchisee and the Board are not required, to avoid a claim that it has violated any of the Vehicle Code provisions, a franchisor may decide to issue notices that comply with the statutes. The franchisor also may at the same time expressly state, along with the notices or in the notices themselves, that the franchisor believes that the notices were not required and also claim that there is no right in the franchisee to file a protest despite the notices stating to the contrary (as required by the statutory language.)

California Code of Regulations. Notices should not be combined to include more than one franchisee nor combined to include more than one line-make.

If a Manufacturer or Distributor Wants to Terminate or Refuse to Continue an Existing Franchise (Non-Renewal), What Must Be Done?

Vehicle Code sections 3060(a) and 3070(a) provide that no franchisor shall terminate or refuse to continue any existing franchise (non-renewal) unless: (1) the franchisee and the Board have received written notice; (2) if a protest is filed, the Board finds that there is good cause for termination or refusal to continue following a hearing; and (3) the franchisor has received the written consent of the franchisee, or the appropriate period for filing a protest has lapsed.

The statute provides for either a 60-day or 15-day notice of termination. The **60-day notice of termination** shall set forth the specific grounds for termination or refusal to continue. The **15-day notice of termination** requires the specific grounds with respect to any of the following:

1. Transfer of any ownership or interest in the franchise without the consent of the franchisor, which consent shall not be unreasonably withheld.
2. Misrepresentation by the franchisee in applying for the franchise.
3. Insolvency of the franchisee, or filing of any petition by or against the franchisee under any bankruptcy or receivership law.
4. Any unfair business practice after written warning thereof.
5. Failure of the motor vehicle dealer to conduct its customary sales and service operations during its customary hours of business for seven consecutive business days, giving rise to a good faith belief on the part of the franchisor that the motor vehicle dealer is in fact going out of business, except for circumstances beyond the direct control of the motor vehicle dealer or by order of the DMV.

The statutes are unambiguous concerning the format and content for the notices. The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.

(To be inserted when a **60-day notice of termination** or refusal to continue is given.)

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

(To be inserted when a **15-day notice of termination** is given.)

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

What Steps Are Necessary to Issue a Notice of Termination or Refusal to Continue (Non-Renewal)?

Steps Necessary to Issue a Notice of Termination or Refusal to Continue	Completed ✓
Determine if a 15-day or 60-day notice of termination is appropriate. A 60-day notice is appropriate for refusal to continue an existing franchise.	
Draft the appropriate notice being mindful of the statutory language outlined above.	
Specify the grounds for termination or refusal to continue in the notice.	
Send the notice to the dealer whose franchise is being terminated or not continued. It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ⁵	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

After Proper Notice of Termination or Refusal to Continue (Non-Renewal) to the Dealer and Board, Under What Circumstances Can the Dealership Be Terminated?

The dealership can be terminated if:

1. The franchisor has received the written consent of the franchisee; or,
2. The appropriate period for filing a protest has lapsed (10 or 30 days from the dealer's receipt of the notice depending on whether a 15-day or 60-day notice of termination); or,
3. If a protest is filed, the Board finds that there is good cause for termination or refusal to continue following an evidentiary hearing.

If a Manufacturer or Distributor Wants to Modify a Franchise, What Must Be Done?

Vehicle Code sections 3060(b) and 3070(b) provide that no franchisor shall modify or replace a franchise with a succeeding franchise if the modification or replacement would substantially affect the franchisee's sales or service obligations or investment unless the franchisor has first given the Board and each affected franchisee written notice thereof at least 60 days in advance of the modification or replacement.

The notice requirements are like those for terminations. The "notice to dealer" language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.

⁵ The Board's preference is to receive notices by email (nmvb@nmvb.ca.gov). Alternatively, notices can be sent regular, certified or registered mail to 2415 1st Avenue, MS L242, CA 95818.

NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived.

What Steps Are Necessary to Issue a Notice of Modification?

Steps Necessary to Issue a Notice of Modification	Completed ✓
Determine if the modification “substantially affects the dealer’s sales or service obligations or investment.” (See footnote 4.)	
Draft the appropriate notice of modification being mindful of the statutory language outlined above.	
Send the notice to the dealer whose franchise is being modified. It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ⁶	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

If a New Franchise Is to Be Established or an Existing Franchise Relocated, What Must Be Done?

Vehicle Code sections 3062(a) and 3072(a) provide that if a franchisor seeks to enter into a franchise establishing an additional **motor vehicle dealership**, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make⁷ is represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing, first notify the Board and each franchisee in that line-make in the relevant market area of the franchisor’s intention. If a protest is not filed or has already been resolved, this process is referred to as “clearing the market.”

⁶ See Footnote 5.

⁷ For motor vehicles other than RVs, “like-make” is not defined in the code. What is or is not a same “line-make” is obvious in most situations. However, gray areas can exist. In this Guide, the working definition of “line-make” for the automobile industry corresponds to that used by the DMV as a classification system for registering vehicles, licensing dealers, and resolving questions related to OL-124 relevant market area requirements. For instance, in the automotive industry, the DMV considers a manufacturer such as General Motors would have several “makes” including Buick, Chevrolet, and Cadillac. Each “make,” in turn, would be comprised of several “lines” or models, e.g., Chevrolet has Silverado and Tahoe “lines” or models. For the RV industry which lacks uniformity, the “recreational vehicle line-make” is defined in Vehicle Code section 3072.5 as: “a group or groups of recreational vehicles defined by the terms of a written agreement that complies with Section 331.3.” It is essential that RV franchisors are precise when defining a line-make in RV franchise agreements and ensure their makes are registered with DMV.

If a franchisor of new cars, trucks, or motorcycles seeks to enter into a franchise that authorizes a **satellite warranty facility** to be established at, or relocated to, a proposed location which is within two miles of any dealership of the same line-make, the franchisor shall first give notice in writing of the franchisor's intention to establish or relocate a satellite warranty facility at the proposed location to the Board and each franchisee operating a dealership of the same line-make within two miles of the proposed location. (Veh. Code 3062(a)(2)) The recreational vehicle statutes do not contain a similar provision concerning satellite warranty facilities.

The "notice to dealer" language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.⁸

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

What Are the Exceptions to Vehicle Code Sections 3062 and 3072 Notice Requirements?

The requirements above, do not apply in the following situations:

1. The relocation of an existing dealer to any location that is **both** within the same city as, and within one (1) mile from, the existing dealership location.
2. The establishment at a location that is **both** within the same city as, and within one-quarter (1/4) mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.
3. Any temporary display of vehicles at a fair, exposition, or similar exhibit that does not exceed 30 days. No actual sales may occur at the temporary location.
4. The reopening of a dealership that has not been in operation for less than one year.

An additional exception pertains to recreational vehicle dealers only: An annual show sponsored by a national trade association of recreation vehicle manufacturers that complies with Vehicle Code section 11713.15(d).⁹ ~~For example, the California RV Show sponsored by the Recreation Vehicle Industry Association would be exempt from the Vehicle Code section 3072 notice requirements.~~

⁸ The last sentence in the "Notice to Dealer" language in Section 3072(a) contains commas as follows: "If, within this time, you file with the board..."

⁹ Effective September 19, 2018, subdivision (d) of Vehicle Code section 11713.15 was amended to exempt a recreational vehicle dealer being issued a temporary branch license from the notice requirements if the show is located in a county with a population of 9,000,000 or more persons, or at a location within 30 miles from the prior approved location of the show, and at least 10 manufacturers are participating in the show. (Assembly Bill 2330, Stats. 2018, ch. 537)

What Steps Are Necessary to Issue a Notice of Establishment or Relocation?

Steps Necessary to Issue a Notice of Establishment or Relocation	Completed ✓
Determine if an exception to Vehicle Code section 3062 or 3072 notice requirements applies.	
Draft the appropriate notice of establishment or relocation being mindful of the statutory language outlined above.	
Identify the proposed location for the establishment or relocation.	
Send the notice to all dealers of the same line-make within the relevant market area (10-mile radius). It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ¹⁰	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

After Proper Notice of Establishment or Relocation to the Dealer(s) and Board, Under What Circumstances Can the Franchisor Establish the Proposed Dealership or Relocate the Existing Dealership?

The proposed dealership can be established, or an existing dealership relocated if:

1. The appropriate period for filing a protest has lapsed (20 days from the dealer's receipt of the notice or 30 days if an extension of time was granted by the Board); or,
2. If a protest was filed, after an evidentiary hearing before the Board, the protesting dealer is unable to prove good cause not to allow the establishment or relocation.

¹⁰ See Footnote 5.

What Is a Notice of Off-Site Sale?

Vehicle Code sections 3062(c) and 3072(b)(3) require that if an “off-site sale” is intended, the franchisor must give notice to all dealers of the same line-make within the relevant market area (10 miles) of the proposed site and the Board. The impacted dealer(s) would have a right to protest the off-site sale.

The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text.¹¹

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

If there are no dealers of the same line-make within 10 miles of the proposed off-site sale location, notice to the Board is not required.

What Is a Certificate of Proposed Franchise (OL 124)?

The Certificate of Proposed Franchise (OL 124) notifies DMV that a dealer is authorized to sell a line-make at a particular address. The OL 124 (see sample on pages 9-10) requires that a manufacturer or distributor certify that notice to the Board is not required under Vehicle Code section 3062 or 3072 (for example, “no other franchised dealers of the same line-make within the relevant market area”) or that there are franchised dealers of the same line-make within the relevant market area and notice has been given, but no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest.) Even though ~~the California RV Show or other~~ **an** annual trade show sponsored by a national trade association of recreation vehicle manufacturers is exempt from the Vehicle Code section 3072 notice requirements (see page 6), an OL 124 form must be issued by the manufacturer to each dealer participating in the show.

¹¹ The last sentence in the “Notice to Dealer” language in Section 3072(a) contains commas as follows: “If, within this time, you file with the board...”



LICENSING OPERATIONS DIVISION
CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY	
OCCUPATIONAL LICENSING NUMBER	

Instructions:

- This form must be completed by a licensed Manufacturer or Distributor.
- The licensed dealer is responsible for submitting this form to the Department of Motor Vehicles with the appropriate application form(s).
- This form will **NOT** be accepted if modified or altered and must contain an original signature.

The location is a ☐ Permanent Location
☐ Temporary Branch Location (must be 30 days or less)

Date(s) of Event: From: _____ To: _____

I/We

MANUFACTURER/DISTRIBUTOR NAME

LICENSE NUMBER

hereby certify that:

- ☐ Written notification to the New Motor Vehicle Board and each franchisee is not required pursuant to Vehicle Code section 3062(b) or 3072(b), or there are no other franchised dealers of the same line-make located within the relevant market area.
- ☐ Written notification has been provided to the Board and each franchisee of this line-make of the franchisor's intent to enter into a franchise establishing an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest). (A change in ownership of an existing established location shall not be construed as establishing an additional location.) Enter date of notification below.

MAKE OF VEHICLE(S), MOTORHOME(S), OR RECREATIONAL TRAILER(S)

DATE THE NEW MOTOR VEHICLE BOARD AND DEALER(S) WERE NOTIFIED, IF APPLICABLE

PROPOSED FRANCHISEE NAME (AS IT APPEARS ON LICENSE OR APPLICATION FOR LICENSE)

DEALER LICENSE NUMBER (IF APPLICABLE)

ADDRESS (AS SHOWN ON LICENSE OR APPLICATION FOR LICENSE)

CITY

STATE

ZIP CODE

AUTHORIZED SIGNATURE (OWNER OF RECORD OR LICENSED REPRESENTATIVE)

DATE

X

PRINT OR TYPE NAME

OWNER OR REPRESENTATIVE LICENSE NUMBER

CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072*, state in part:

Establishing or Relocating Dealerships

3062. (a) (1) Except as otherwise provided in subdivision (b), if a franchisor seeks to enter into a franchise establishing an additional motor vehicle dealership, or seeks to relocate an existing motor vehicle dealership, that has a relevant market area within which the same line-make is represented, the franchisor shall, in writing, first notify the board and each franchisee in that line-make in the relevant market area of the franchisor's intention to establish an additional dealership or to relocate an existing dealership. Within 20 days of receiving the notice, satisfying the requirements of this section, or within 20 days after the end of an appeal procedure provided by the franchisor, a franchisee required to be given the notice may file with the board a protest to the proposed dealership establishment or relocation described in the franchisor's notice. If, within this time, a franchisee files with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant an additional 10 days to file the protest. When a protest is filed, the board shall inform the franchisor that a timely protest has been filed, that a hearing is required pursuant to Section 3066, and that the franchisor may not establish the proposed dealership or relocate the existing dealership until the board has held a hearing as provided in Section 3066, nor thereafter, if the board has determined that there is good cause for not permitting the establishment of the proposed dealership or relocation of the existing dealership. In the event of multiple protests, hearings may be consolidated to expedite the disposition of the issue.

...

(b) Subdivision (a) does not apply to either of the following:

- (1) The relocation of an existing dealership to a location that is both within the same city as, and within one mile from, the existing dealership location.
 - (2) The establishment at a location that is both within the same city as, and within one-quarter mile from, the location of a dealership of the same line-make that has been out of operation for less than 90 days.
- (c) Subdivision (a) does not apply to a display of vehicles at a fair, exposition, or similar exhibit if actual sales are not made at the event and the display does not exceed 30 days. ...
- (d) For the purposes of this section, the reopening of a dealership that has not been in operation for one year or more shall be deemed the establishment of an additional motor vehicle dealership. ...

*Section 3072, pertaining to recreational vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational vehicle manufacturers and distributors are encouraged to review the entire *California Vehicle Code* Section.



OL-124, CERTIFICATE OF PROPOSED FRANCHISE

Applicable to **New Motor Vehicles, Motorcycles, All-Terrain Vehicle and Recreational Vehicles** as defined by Health and Safety Code Section 18010 (a)

TYPE TRANSACTION	OL-124 NOT REQUIRED	OL-124 PURSUANT TO CVC 11704	BOARD/MARKET AREA FRANCHISE NOTICE NOT REQUIRED	BOARD/MARKET AREA FRANCHISE NOTICE REQUIRED
1. New license (Buy/Sell) of a currently occupied location (Main or branch location application)		X		X
2. New location - Not currently occupied, except as exempt pursuant to CVC 3062(p), 3072(b). See #9, #10, and #11		X		X
3. Change of Business Name		X		X
4. Adding a Make Distinctive Business Name		X - For new Make		X
4a. Adding a Non-Make Distinctive Business	X			
5. Change of Corporate Name/LLC or LLP Name		X		X
6. Change of Corporate Officers/LLC or LLP Manager	X			
7. Change of Address (Postal Service change - no physical movement of location)		X - Formerly known as prior address		X
8. Change of Address (New location is beyond 1 mile of current licensed location)		X		X
9. Change of Address (New location is within 1 mile of current licensed location and within the same city)		X		X
9a. Change of Address (New location is within 1 mile of current licensed location and within a different city)		X		X
10. Establishing location within the same city, within 1/4 mile of a location that has been out of operation for less than 90 days		X		X
11. Reopening a location that has not been in operation for less than one year		X - Or copy of prior OL-124		X
11a. Reopening a location that has not been in operation for one year or more		X		X
12. Temporary Branch locations - Display only with no sales activity that does not exceed 30 days	X - No application required			X
12a. Temporary Branch locations - Display only with no sales activity but display exceeds 30 days	X - No application required			X
13. Temporary Branch locations with sales activity on site and other same line-make dealers within RMA		X		X
13a. Temporary Branch locations with sales activity on site and no other same line-make dealers within RMA		X		X
14. Addition of a line-make to an existing established location and other same line-make dealers within RMA		X		X
14a. Addition of a line-make to an existing established location and there are no other same line-make dealers within RMA		X		X
15. Renewal of License (Application must be submitted no later than 30 days after license expiration date)	X			
16. Establishing or Relocating Satellite Warranty facility more than 2 miles from a same line-make dealer	X - No application required			X
16a. Establishing or Relocating Satellite Warranty facility within 2 miles of a same line-make dealer	X - No application required			X

Additional Information:

- The OL-124 must reflect the business name and address as it appears on the corresponding application for an Occupational License.
- The dealer is responsible for submitting the OL-124 with an appropriate application to an Occupational Licensing Inspection's Office.
- The OL-124 must be signed by an owner of the Manufacturer/Distributor on file with Occupational Licensing or a licensed Representative.
- Relevant Market Area pursuant to California Vehicle Code Section 507, is any area within a radius of 10 miles from the site of a potential new dealership.
- The powers and duties of the New Motor Vehicle Board are defined in Division 2, Chapter 6, of the California Vehicle Code.

APPLICANT SHOULD RETAIN THIS PAGE FOR THEIR INFORMATION.
DO NOT SUBMIT WITH APPLICATION.

When Is an OL 124 Not Required?

An OL 124 is not required for a temporary display of vehicles at a fair, exposition or similar exhibit, if no actual sales are made at those events and the display does not exceed 30 days.

Who Is Authorized to Sign an OL 124?

A licensed representative or an owner, as reflected in DMV records, of the manufacturer/distributor must sign the OL 124. Vehicle Code section 512 defines a representative as “any person regularly employed by a manufacturer or distributor for the purpose of negotiating or promoting the sale of the manufacturer’s or distributor’s vehicles to their franchisees or for regularly supervising or contacting franchisees or prospective franchisees” in California for any purpose. Vehicle Code section 11900, et seq. pertains to the licensing of representatives.

For additional information concerning the DMV Occupational Licensing requirements, please contact Occupational Licensing at (916) 229-3346.

What Steps Are Necessary to Issue a Notice of Off-Site Sale?

Steps Necessary to Issue a Notice of Off-Site Sale	Completed ✓
Determine if an exception to the Vehicle Code section 3062 or 3072 notice requirements applies (e.g., temporary off-site display or Annual National RV Trade Show).	
Identify the proposed location for the off-site sale.	
Draft the appropriate notice of off-site sale being mindful of the statutory language outlined above.	
Send the notice to all dealers of the same line-make within the relevant market area (10-mile radius). It is prudent to send via certified mail, return receipt requested. Nothing in the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer and the Board.	
Send a copy of the notice to the Board, attention Executive Director, with a cover memo indicating a contact name and phone number. The statutory time to file a protest does not commence until receipt by both the dealer and the Board. ¹²	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

¹² See Footnote 5.

After Proper Notice of Off-Site Sale to the Dealer(s) and Board, Under What Circumstances Is the Market “Clear” for Purposes of Proceeding with the Off-Site Sale?

The proposed off-site sale can go forward and an OL 124 filed with DMV if the appropriate period for filing a protest has lapsed (20 days from the dealer’s receipt of the notice or 30 days if an extension of time was granted by the Board). The filing of a protest of a proposed off-site sale results in the sale not going forward.

Is a Franchisor Required to File a Copy of the OL 124 with the Board as Well as DMV?

A franchisor is not required to file a copy of the OL 124 with the Board. However, if it is filed, as a courtesy, it will be reviewed for completeness. Please ensure that the appropriate box on the OL 124 form is checked, i.e., notice to the Board is not required or there are franchised dealers of the same line-make within the relevant market area that were noticed but no protests have been filed or the protest(s) filed were resolved (i.e., dismissed or Board Decision overruling the protest).

What Steps Can Be Taken If There Is Not Enough Time to “Clear the Market?”

The statutorily required notice should be sent to the impacted dealers with sufficient time to “clear the market.” Generally, this is not a problem when a franchisor clears the market for an establishment or relocation of a dealership. However, for an off-site sale, the impacted dealers have 20 days to file a protest and may request a 10-day extension upon a showing of good cause. In the event a dealer requests permission to participate in an off-site sale and there is not sufficient time to clear the market, all impacted dealers, i.e., those of the same line-make within the relevant market area, may file a protest with the Board and simultaneously file a request for dismissal of the protest. Unless a request for a fee waiver is received and approved, a \$200.00 filing fee is required. Detailed information concerning a fee waiver can be obtained from the Board legal staff at (916) 445-1888.

What Types of Information Does the Board Not Require?

There are a number of manufacturers and distributors that submit OL 124 forms and correspondence to the Board that are not necessary. The Board does not need to be informed if a dealer does any of the following:

1. Changes name of dealership, dba, or corporation;
2. Changes the ownership structure;
3. Voluntarily terminates;
4. Transfers its ownership interest to another entity;
5. Relocates to another location if no other dealers of the same line-make are within the relevant market area;
6. Is established as a new franchisee if no other dealers of the same line-make are within the relevant market area;
7. Participates in an off-site sale of used vehicles;
8. Participates in an off-site display of vehicles for less than 30 days;
9. Participates in an off-site sale of new vehicles and no other dealers of the same line-make are within the relevant market area.

What Is the Impact of a Faulty or Defective Notice?

Providing a timely and accurate notice gives a manufacturer or distributor the ability to quickly finalize its intended action, i.e., termination, modification, establishment, and so on. In the event a notice does not comply with the statute, the Board legal staff may contact the franchisor and offer suggestions to correct the notice. However, the faulty notice may delay the proposed action.

The purpose of a notice is to start the statutory time period in which an aggrieved dealer has to protest its franchisor's intended action. When the notice is not in compliance, the time to file the protest does not commence.¹³ The First District Court of Appeal (*British Motor Car Distributors, Ltd., d/b/a Maserati Import Company v. New Motor Vehicle Board; British Motors of Monterey, Inc., Real Party in Interest* (1987) 194 Cal.App.3d 81, 91-94) held that the limitations period of Vehicle Code section 3060 is expressly dependent upon the franchisor first complying with the notice provisions and any other interpretation would reward franchisors who send out defective notices. Even if a manufacturer or distributor never provides proper notice to the Board or franchisee, the lack of notice does not prevent the Board from exercising its powers to resolve disputes between franchisees and franchisors.

What Is a Delivery and Preparation Obligations Compensation Schedule?

Manufacturers and distributors typically reimburse their dealers for preparing the new vehicles for delivery to purchasers. Vehicle Code sections 3064 and 3074 provide that every franchisor **shall** file with the Board a copy of their delivery and preparation obligations, as well as a schedule of compensation to be paid franchisees for the work and services they are required to perform in connection with the delivery and preparation obligations.

The statute does not specify when or how often the compensation schedule should be filed. Pursuant to current Board policy, all filings in this regard are maintained for three years. Therefore, every manufacturer and distributor is required to file a current copy of their delivery and preparation obligations (PDI) and PDI schedule of compensation with the Board once every three years or whenever there are changes to the information. Please keep in mind that the documents provided by franchisors are public records and subject to disclosure under the California Public Records Act. (Gov. Code § 7920.000, et seq.)

Section 586(b) and (c) of Title 13 of the California Code of Regulations require a manufacturer and distributor to file the above information with the Board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedule or formula has previously been filed with the Board. Additionally, any addition, deletion, change or modification to the information on file with the Board must be updated with the new information on or before the date the changes become effective.

What Is a Warranty Reimbursement Schedule or Formula?

Manufacturers and distributors typically reimburse dealers for warranty repairs at a pre-established rate. Vehicle Code section 3065 provides that every franchisor **shall** file a copy of its warranty reimbursement schedule with the Board, which must be reasonable with respect to the time and compensation allowed to the dealer for the performance of warranty diagnostics, repair, service, and all other conditions of the obligation, including costs directly associated with the disposal of hazardous materials that are associated with a recall repair. Vehicle Code section 3075 provides that every recreational vehicle franchisor **shall** file a copy of its warranty reimbursement schedule or formula with the Board, which must be reasonable with respect to the time and

¹³ If a dealer waits an unreasonable period to file a protest when it was put on notice, even though the notice did not comply, an Administrative Law Judge may take equitable defenses into consideration when faced with a motion to reject a protest for timeliness. This would be a factual determination made by an Administrative Law Judge and would be outside the purview of information provided by the Board legal staff.

compensation allowed to the dealer for the performance of warranty and all other conditions of the obligation.

The statute does not specify when or how often the warranty reimbursement schedule or formula should be filed. Pursuant to current Board policy, all filings in this regard are maintained for three years. Therefore, every manufacturer and distributor is required to file a current copy of their warranty reimbursement schedule or formula with the Board once every three years or whenever there are changes to the information. As indicated above, please keep in mind that the documents provided by franchisors are public records and subject to disclosure under the California Public Records Act.

Section 586(b) and (c) of Title 13 of the California Code of Regulations require a manufacturer and distributor to file the above information with the Board no later than 30 days after the date the license is issued or within 30 days after the date of renewal of the license if no schedule or formula has previously been filed with the Board. Additionally, any addition, deletion, change or modification to the information on file with the Board must be updated with the new information on or before the date the changes become effective.

What Notices Are Required with Respect to Factory Ownership or Operation of a Dealership Within 10-Miles of an Independent, Franchised Dealer of the Same Line-Make?

Effective January 1, 2024, subdivision (o) of Vehicle Code section 11713.3 precludes a manufacturer or distributor from competing with their franchisees in the sale, lease, or warranty service of new motor vehicles except in limited circumstances. A manufacturer or distributor is not deemed to be competing with an independent, franchised dealer when: (1) owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months [Part A or Veh. Code § 11713.3(o)(2)(A)]; and (2) owning an interest in a dealer as part of a bona fide dealer development program that satisfies certain requirements [Part B or Veh. Code § 11713.3(o)(2)(B)]. There are several instances in which a manufacturer or distributor may be required to file a statutory notice with the Board.

Under Part A every manufacturer, branch, and distributor that temporarily owns or operates a dealership is required to give written notice to the Board, **within 10 days**, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

If a Manufacturer or Distributor Seeks to Own or Operate a Dealership in Preparation for Sale to a Successor Independent Franchisee and Needs to Extend The Statutory One-Year Period, What Steps Are Necessary to Request an Extension of Time (Veh. Code § 11713.3(o)(2)(A))?

Vehicle Code section 11713.3(o)(2)(A) provides that after a showing of good cause by a manufacturer or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the Board may extend (beyond one year) the time period. The Board regulation (Section 565 of Title 13 of the California Code of Regulations, hereinafter 13 CCR § 565) establishes the timeframe and procedure for filing a request for an extension of the one-year time period in Part A.

The manufacturer or distributor is required to give written notice of its intention to seek an extension of time for good cause shown to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area, i.e., an impacted dealer.

The written notice is required to meet a prescribed format that is like other statutorily required notices in the Vehicle Code. The “notice to dealer” language below must be on the first page of the written notice, in at least 12-point bold type, and circumscribed by a line to segregate it from the rest of the text. (13 CCR § 565(c))

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.

Upon receipt of a request for extension of time, the Board will notify each franchisee of the same line-make within the relevant market area, 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. (13 CCR § 565(d))

What Steps Are Necessary to File a Request for an Extension of Time?

Steps Necessary to File a Request for Extension of Time	Completed ✓
Sixty days prior to the expiration of the one-year period, the manufacturer or distributor shall give written notice of its intention to seek an extension of time for good cause shown to the Board and to each franchisee operating a dealership of the same line-make within the relevant market area. (13 CCR § 565(b) and (l))	
A list of all franchisees operating a dealership of the same line-make within the relevant market area shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(1))	
A statement of facts detailing the specific need for the extension of time shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(2))	
The requested expiration date of the extension shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(3))	
A chronology of actions both taken and planned by the manufacturer or distributor to prepare for the sale of the franchise to a successor independent franchisee shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(4))	
A statement to the effect that the information required in 13 CCR § 565(g)(2)-(4) has been provided to each franchisee operating a dealership of the same line-make within the relevant market area shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(5))	
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 shall be provided to the Board along with the request for extension. (13 CCR § 565(g)(6))	

Requests that are not timely received will not be considered by the Board and will be deemed denied.

What is the Procedure after the Board Receives a Timely Request for Extension of Time?

Upon the timely filing of a request for extension, a copy of the request is forwarded to the members of the Board. Unless the manufacturer or distributor consents to dealer member participation (13 CCR § 565(g)(6)), the matter is considered by the public members only.¹⁴

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, the written request, written responses in opposition to the request, and comments of interested parties. (13 CCR § 565(e)(1)-(3))

The members of the Board have 30 days from receipt of the request for extension to review it. Any time during the 30-day period, a Board member objection to the request can be lodged with the Executive Director. 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. (13 CCR § 565(m)) If there have been no timely objections to the request for extension by the members of the Board and no timely oppositions by impacted dealers have been received, then the Executive Director shall grant the extension. (13 CCR § 565(h)) The granting of the extension occurs without the requirement of a noticed Board meeting.

What is the Procedure if the Board Objects or an Impacted Dealer Opposes the Request for Extension?

In the event of a timely notice of objection to the request for extension by a member of the Board and/or a timely opposition by an impacted dealer has been received, the matter shall be considered by the Board at its next scheduled meeting. (13 CCR § 565(i)) The Executive Director notifies the manufacturer or distributor 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. The manufacturer and impacted dealer(s), if any, shall be given at least 10 days' notice of the time, date, and location of the Board meeting at which the request will be considered. (13 CCR § 565(j)) The Board meets approximately every 6-to-8 weeks. However, if necessary, a Special Board meeting could be scheduled. Depending on the location of the parties, the meeting could be held in Sacramento, San Francisco, or Los Angeles.

What Notices Are Required with Respect to Factory Ownership of a Dealership as Part of a Dealer Development Program?

Under Part B of Vehicle Code section 11713.3(o) (see discussion on page 14), every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined is required to give written notice to the Board, **annually**, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

The statute does not specify when the annual notice should be sent to the Board. Every January, the Board staff remind the industry of this obligation.

¹⁴ The Board consists of nine members. Four members are licensed new motor vehicle dealers and five members are from the general public. In most instances, dealer members are precluded from participating in matters involving disputes between a dealer and manufacturer or distributor. In Article 4 protests (involving cars, motorcycles, and ATVs), dealer members may participate if both parties so stipulate. Dealer members participate in Article 5 recreational vehicle protests unless a dealer Board member also owns and/or has a financial interest in a recreational vehicle dealership. Both parties can stipulate to allow the dealer member to participate in this instance.

What Is a Motor Vehicle Warranty Adjustment Program?

Manufacturers and distributors occasionally establish a motor vehicle warranty adjustment program (“hidden warranties.”) Civil Code section 1795.92 provides that “[a] manufacturer **shall**, within 90 days of the adoption of an adjustment program,¹⁵ subject to priority for safety or emission-related recalls, notify by first-class mail all owners or lessees of motor vehicles eligible under the program of the condition giving rise to and the principal terms and conditions of the program.” (Emphasis added.) Copies of all notices mailed shall be sent to the Board. (Civil Code § 1795.92(b)) The Board’s preference is to receive these notices by email at nmvb@nmvb.ca.gov.

What Is the Consequence of Failing to File or to Timely File a Statutorily Required Notice, Schedule, or Formula?

Vehicle Code section 3050(b)(3) gives the Board power to “[o]rder the department [DMV] to exercise any and all authority or power that the department [DMV] 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.” (See 13 CCR § 593.3) Depending on the facts and circumstances in a particular case, the Board may exercise this power for inadequate filing of statutorily required notices.

¹⁵ Civil Code section 1795.90 defines “adjustment program” as “any program or policy that expands or extends the consumer’s warranty beyond its stated limit or under which a manufacturer offers to pay for all or any part of the cost of repairing, or to reimburse consumers for all or any part of the cost of repairing, any condition that may substantially affect vehicle durability, reliability, or performance, other than service provided under a safety or emission-related recall campaign. ‘Adjustment program’ does not include ad hoc adjustments made by a manufacturer on a case-by-case basis.”

Sample 15-Day Termination Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: 15-Day Notice of Termination (Veh. Code §§ 3060(a) or 3070(a))

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 10 calendar days after receiving this notice or within 10 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Dear _____:

Identify the specific reasons for seeking termination of the franchise set forth in California Vehicle Code section 3060(a)(1)(B) or 3070(a)(1)(B).

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample 60-Day Termination or Refusal to Continue Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: 60-Day Notice of Termination or Refusal to Continue
(Veh. Code §§ 3060(a) or 3070(a))

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the termination of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days after receiving this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest right will be waived.

Dear _____:

Identify the reasons for terminating or refusing to continue the franchise.

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample Modification Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: 60-Day Notice of Modification (Veh. Code §§ 3060(b) or 3070(b))

NOTICE TO DEALER: Your franchise agreement is being modified or replaced. If the modification or replacement will substantially affect your sales or service obligations or investment, you have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing in which you may protest the proposed modification or replacement of your franchise under provisions of the California Vehicle Code. You must file your protest with the board within 30 calendar days of your receipt of this notice or within 30 days after the end of any appeal procedure provided by the franchisor or your protest rights will be waived.

Dear _____:

Detail information pertaining to the proposed modification or replacement of the franchise agreement.

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample Establishment or Relocation Notice

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: Notice of Establishment or Relocation (Veh. Code §§ 3062(a)(1) or 3072(a)(1))¹

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear _____:

Designate the location of the site for the proposed establishment of a new dealership, or relocation of an existing dealership, where there is already an existing dealership of the same line-make within the “relevant market area” (that area within a radius of 10 miles of the proposed location.)

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

¹ The last sentence in the “Notice to Dealer” language in Section 3072(a)(2) contains commas as follows: “If, within this time, you file with the board...”

Sample Establishment or Relocation of a Satellite Warranty Facility Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: Notice of Establishment or Relocation of a Satellite Warranty Facility (Veh. Code § 3062(a)(2))

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear _____:

Designate the location of the site for the proposed establishment of a new satellite warranty facility or relocation of an existing satellite warranty facility that is within two miles of any dealership of the same line-make.

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

This sample provides a basic means for drafting a notice for filing with the Board but should not be mistaken as a substitute for personalized advice from a qualified attorney or other person sufficiently knowledgeable about the Board. The Board strives to provide relevant, accurate and complete information. However, the Board cannot and does not warrant the relevancy, accuracy, completeness or propriety of the information provided in this sample.

Sample Off-Site Sale Notice

Date

Name of Manufacturer/Distributor
Address

Name of Impacted Dealer
Address

Re: Notice of Off-Site Sale (Veh. Code §§ 3062(c) or 3072(b)(3))¹

NOTICE TO DEALER: You have the right to file a protest with the NEW MOTOR VEHICLE BOARD in Sacramento and have a hearing on your protest under the terms of the California Vehicle Code if you oppose this action. You must file your protest with the board within 20 days of your receipt of this notice, or within 20 days after the end of any appeal procedure that is provided by us to you. If within this time you file with the board a request for additional time to file a protest, the board or its executive director, upon a showing of good cause, may grant you an additional 10 days to file the protest.

Dear _____:

Detail information pertaining to the proposed off-site sale where there is an existing dealership of the same line-make within a radius of 10 miles of the location proposed for the off-site sale.²

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

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¹ The last sentence in the “Notice to Dealer” language in Section 3072(a)(2) contains commas as follows: “If, within this time, you file with the board...”

² For recreational vehicles, an annual show sponsored by a national trade association of recreation vehicle manufacturers the California RV Show sponsored by the Recreation Vehicle Industry Association is exempt from the 3072 notice requirements.

Sample Notice of Request for Extension of Time

Date

Name of Manufacturer/Distributor

Address

Name of Impacted Dealer

Address

Re: Notice of Request for Extension of Time (Veh. Code § 11713.3(o) and 13 CCR § 565)

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.

Dear _____:

Detail information pertaining to the request for extension of time for good cause shown, including, but not limited to, the following:

A list of all franchisees operating a dealership of the same line-make within the relevant market area (13 CCR § 565(g)(1)).

A statement of facts detailing the specific need for the extension of time (13 CCR § 565(g)(2)).

The requested expiration date of the extension (13 CCR § 565(g)(3)).

A chronology of actions both taken and planned by the manufacturer or distributor to prepare for the sale of the franchise to a successor independent franchisee (13 CCR § 565(g)(4)).

A statement to the effect that the information required in Title 13 of the California Code of Regulations section 565(g)(2)-(4) has been provided to each franchisee operating a dealership of the same line-make within the relevant market area (13 CCR § 565(g)(5)).

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 (13 CCR § 565(g)(6)).

Sincerely,

Manufacturer/Distributor

cc: New Motor Vehicle Board

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EXECUTIVE DIRECTOR'S REPORT

February 28, 2025

A.

ADMINISTRATIVE MATTERS

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
ADMINISTRATION COMMITTEE			
1. <u>Update Concerning Moving the Board's Offices to DMV Headquarters</u> Kim Vaye	Update regarding moving of the Board's Offices upon the expiration of the lease at Midtown Building to DMV Headquarters.	Ongoing	In progress.
2. <u>Update Guide to the New Motor Vehicle Board</u> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	February 2025	In progress. The revised Guide will be considered at the February 28, 2025, General Meeting.
BOARD DEVELOPMENT COMMITTEE			
1. <u>Schedule Board Member Education Presentations</u> Tim Corcoran	Develop a schedule for prioritizing topics and speakers for Board member education presentations for upcoming meetings.	Ongoing	In progress. Board education will be presented at each General Meeting.
2. <u>Solon C. Soteras Employee Recognition Award Recipient</u> Tim Corcoran	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	August 2025	In progress. The nominee will be considered at the August 1, 2025, General Meeting.
COMMITTEE ON EQUITY, JUSTICE AND INCLUSION			
1. <u>Develop Strategies for Board Consideration</u> Kim Vaye	Develop strategies for the Board's consideration, which advance California State Transportation Agency's stated goal of "Enhancing the lives of all Californians – particularly people of color and disadvantaged communities..."	Ongoing	In progress. This will be discussed at the February 28, 2025, Committee Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>2. Diversity, Equity, Inclusion, Justice and Accessibility Training and Development</u> Kim Vaye	Equity Officer will explore no-cost Diversity, Equity, Inclusion, Justice, and Accessibility training and development opportunities for staff and Board members.	Ongoing	In progress. This will be discussed at the February 28, 2025, Committee Meeting.
<u>3. Land Acknowledgments for Board Meetings</u> Kim Vaye	Explore writing land acknowledgments for Board meetings.	February 2025	In progress. Land Acknowledgments were discussed by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting, and will be discussed at the Committee Meeting on February 28, 2025.
<u>Review and Revise the Board Adopted Mission Statement of the Ad Hoc Committee</u> Kim Vaye	Review and revise the Ad Hoc Committee's Mission Statement for consideration by the full Board.	November 2024	<u>Completed</u> This revised mission statement was approved by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting.
<u>Create a Charter</u> Kim Vaye	Create a Charter that includes the purpose of the Committee, membership, responsibilities, meetings, equity goals, and deliverables.	November 2024	<u>Completed</u> This Charter was approved by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Formally Implement an Equity Lens Rubric</u> Kim Vaye	Formally implement an equity lens assessment rubric to utilize when reviewing Board proposed new and amended policies.	November 2024	<u>Completed</u> The Equity Lens Rubric was approved by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting.
<u>Review Proposed Amended Board Policy Regarding the Assignment of Merits Hearings to OAH</u> Kim Vaye	This proposal will be reviewed by the Ad Hoc Committee on Equity, Justice and Inclusion prior to being considered by the Board at its February 2025, General Meeting.	November 2024	<u>Completed</u> The amended Board policy was approved by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting.
<u>Establish an Equity Glossary of Terms</u> Kim Vaye	Equity Officer will establish an Equity Glossary of Terms to create a shared understanding with staff and Board, to be updated annually to remain accurate and relevant.	November 2024	<u>Completed</u> The glossary was approved by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting.
EXECUTIVE COMMITTEE			
<u>1. Strategic Plan July 2024 - June 2030</u> Tim Corcoran, Kim Vaye	Develop and implement the Board's first Strategic Plan encompassing July 2024 through June 2030. Delegate discretion to the Executive Director to implement action items responsive to the objectives in the Strategic Plan.	Ongoing	In progress. The Strategic Plan was adopted at the April 25, 2024, General Meeting and the Executive Director was granted discretion to implement action items.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>2. Update concerning Board's Compliance with 1996 Performance Audit</u> Tim Corcoran, Robin Parker	Update regarding the Board's compliance with the 1996 Performance Audit and the resultant Corrective Action Plan	February 2025	In progress. An update will be presented at the February 28, 2025, General Meeting.
FISCAL COMMITTEE			
<u>1. Quarterly Financial Reports</u> Tim Corcoran, Kim Vaye, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<u>2. Report Concerning Out-of-State Travel Plans</u> Tim Corcoran, Kim Vaye	The staff will provide a report concerning the out-of-state travel plans for fiscal year 2025-2026	February 2025	In progress. A report will be presented for consideration at the February 28, 2025, General Meeting.
<u>3. Status report concerning the Board's collection of the Annual Board Fee</u> Tim Corcoran, Kim Vaye, Suzanne Luke	The staff will provide a report concerning the Board's collection of the Annual Fee.	August 2025	In progress. A status report will be provided at the August 1, 2025, General Meeting.
<u>4. Status Report on the Collection of Fees for the Arbitration Certification Program</u> Tim Corcoran, Kim Vaye, Penny Bhatti	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	August 2025	In progress. A status report will be provided at the August 1, 2025, General Meeting.
<u>5. Proposed Board Budget for the Next Fiscal Year</u> Tim Corcoran, Kim Vaye, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss and consider the Board's proposed Budget for fiscal year 2025-2026.	August 2025	In progress. A status report will be provided at the August 1, 2025, General Meeting.

February 2025 Executive Director's Report

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>Proposed Increases to the Board Annual Fee and Filing Fees</u> Tim Corcoran, Kim Vaye, Suzanne Luke, Penny Bhatti	In an effort to address the current economic climate and the Board's decreasing reserves, the annual fee charged to dealers, manufacturers, and distributors within the Board's jurisdiction needs to be amended so that the fees charged are "sufficient to fully fund the activities of the board..." consistent with Vehicle Code section 3016.	November 2024	<u>Completed</u> The Board approved a dealer licensing fee increase within the range of \$400 to \$425. The per vehicle fee for manufacturers and distributors is \$.60 to \$.65 with the same minimum fee as dealers. The Board's preference is for the higher end of the ranges.
GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE			
<u>1. Develop a Core Four - Safety Initiative related to Improving the Repair Rate of California-Registered Vehicles Subject to the Takata Air Bag Inflator "Stop Drive" Safety Recall</u> Tim Corcoran, Kim Vaye	In conjunction with various stakeholders, review and identify strategies including consumer outreach to improve the rate of repair for California-registered vehicles subject to the Takata air bag inflator safety recall. Host future meeting to engage all Board members and the public.	Ongoing	In progress.
<u>2. Host Board Industry Roundtable</u> Tim Corcoran, Kim Vaye, Robin Parker, Jason Rose	Host the traditional Industry Roundtable with representatives from car, truck, motorcycle and recreational vehicle manufacturers/distributors, dealers, in-house and outside counsel, associations and other government entities.	March 2025	In progress. The Industry Roundtable will be held in conjunction with the CNCDA's Dealer Day Event on March 27, 2025, in Sacramento.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
LEGISLATIVE COMMITTEE			
1. <u>Review of Pending Legislation</u> Tim Corcoran, Jason Rose	The staff will provide an overview of pending legislation of special and general interest and pending federal legislation.	Ongoing	In progress. An update will be provided at the February 28, 2025, General Meeting.
<u>Review of Enacted Legislation</u> Tim Corcoran, Jason Rose	The staff will provide an overview of enacted legislation of special and general interest, and pending federal legislation, if any.	Ongoing	<u>Completed</u> A report was provided at the November 1, 2024, General Meeting.
POLICY AND PROCEDURE COMMITTEE			
1. <u>Draft Proposed Regulatory Amendments to Include Electronic Means in Motion Hearings with Live Witness Testimony in Section 551.19 of Title 13 of the California Code of Regulations</u> Robin Parker	In compliance with the Administrative Procedure Act, amend the regulation pertaining to live witness testimony in a motion hearing so the hearing may be held in-person or by 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. This is consistent with the Board's current practice.	February 2025	In progress. The proposed amendments will be considered at the February 28, 2025, General Meeting.
2. <u>Annual Rulemaking Calendar</u> Jason Rose	Consideration of the annual rulemaking calendar.	February 2025	In progress. The annual rulemaking calendar will be considered at the February 28, 2025, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
3. <u>Report on the Assignment of Cases to Board Administrative Law Judges</u> Robin Parker, Jason Rose	Annual report on the assignment of cases to Board Administrative Law Judges ("ALJs").	February 2025	In progress. A report on the assignment of cases to Board ALJs will be presented at the February 28, 2025, General Meeting.
4. <u>Appoint Robin Parker at the Board's Designated Mandatory Settlement Conference Hearing Officer</u> Tim Corcoran, Robin Parker	On October 28, 2024, the Executive Committee designated Robin Parker as the Board's hearing officer for Mandatory Settlement Conferences on an emergency basis given the unexpected passing of Designated Mandatory Settlement Conference Judge Marilyn Wong. This designation will be considered by the full Board.	February 2025	In progress. The designation will be considered at the February 28, 2025, General Meeting.
5. <u>Update the Informational Guide for Manufacturers and Distributors</u> Robin Parker	Update the <i>Informational Guide for Manufacturers and Distributors</i> .	February 2025	In progress. The revised Guide will be considered at the February 28, 2025, General Meeting.
6. <u>Update the Export or Sale-For-Resale Prohibition Policy Guide</u> Robin Parker	Update the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.	February 2025	In progress. The revised Guide will be considered at the February 28, 2025, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>7. Assign Merits Hearings to the Office of Administrative Hearings (OAH)</u> Robin Parker	Effective immediately, assign merits hearings to OAH for all new and existing protests. The Board's retired annuitant ALJs would remain on the Alternative MSC Assignment Log and the Alternative Law and Motion Assignment Log.	February 2025	In progress. This proposal was approved by the then Ad Hoc Committee on Equity, Justice and Inclusion at its November 1, 2024, Meeting. This matter will then be considered by the Board at the February 28, 2025, General Meeting.
<u>8. Promulgate Amendment to the Definition of Administrative Law Judge in subdivision (a) of Section 550 of Title 13 of the California Code of Regulations</u> Jason Rose	In compliance with the Administrative Procedure Act, amend the definition of Administrative Law Judge to exempt the Board from subdivision (b) in Sections 3067, 3081, and 3085.4 when the Office of Administrative Hearings presides over a merits hearing.	Summer 2025	In progress. The Board approved the text at the April 25, 2024, General Meeting. The Notice was published on December 6, 2024. The Public Comment period closed on January 21, 2025. No public comments were received. The final rulemaking packet was submitted to the Office of Administrative Law on January 24, 2025.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
9. <u>Promulgate Amendments to Regulations to Remove References to Facsimile and Residence Addresses in Sections 551.14, 555, and 595 of Title 13 of the California Code of Regulations</u> Jason Rose	In compliance with the Administrative Procedure Act, amend Sections 551.14, 555, and 595 of the Board's regulations to remove references to facsimile and residence addresses.	Summer 2025	In progress. The Board approved the text at the April 28, 2023, General Meeting. The Notice was published on December 6, 2024. The Public Comment period closed on January 21, 2025. No public comments were received. The final rulemaking packet was submitted to the Office of Administrative Law on January 23, 2025.
10. <u>Promulgate Regulatory Amendments to the Board's Conflict of Interest Code</u> Robin Parker	In compliance with the Political Reform Act and the Administrative Procedure Act, amend the Board's Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations to reflect Kim Vaye's position as Assistant Division Chief/Program Manager.		In progress. The Board approved the text at the November 1, 2024, General Meeting. The Fair Political Practices Commission was provided with the amendments on January 28, 2025.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<u>11. Promulgate Amendments to Increase the Annual Board Fee in sections 553 and 553.20 of Title 13 of the California Code of Regulations</u> Jason Rose	In compliance with the Administrative Procedure Act, amend Sections 553 and 553.20 of the Board's regulations to increase the fees paid by dealers, manufacturers, and distributors to fully fund the Board's operation.	January 2026	The Board approved the text at the November 1, 2024, General Meeting. The initial packet prior to publication is pending.
<u>Draft Proposed Regulatory Amendments to Increase the Annual Board Fee in sections 553, and 553.20 of Title 13 of the California Code of Regulations</u> Robin Parker	In compliance with the Administrative Procedure Act, amend the regulations to increase the Annual Board Fee.	November 2024	<u>Completed</u> The proposed regulations were adopted at the November 1, 2024, General Meeting.
<u>Draft Proposed Regulatory Amendments to the Board's Conflict of Interest Code</u> Robin Parker	In compliance with the Political Reform Act and the Administrative Procedure Act, amend the Board's Conflict of Interest Code as set forth in Section 599 of Title 13 of the California Code of Regulations to reflect Kim Vaye's position as Assistant Division Chief/Program Manager.	November 2024	<u>Completed</u> The proposed regulations were adopted at the November 1, 2024, General Meeting.
AD HOC COMMITTEE TO REVIEW THE MISSION AND VISION STATEMENTS			
<u>1. Revise the Board's Mission and Vision Statements</u> Tim Corcoran, Kim Vaye	Review and potentially update the Board's Mission and Vision Statements.	February 2025	In progress. A status report will be presented at the February 2025, General Meeting.

B. CASE MANAGEMENT

CASE VOLUME

OCTOBER 15, 2024, THROUGH FEBRUARY 11, 2025

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	5	0	9
3060	Modification	0	0	11
3062	Establishment	0	0	0
3062	Relocation	0	2	0
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	1	0	2
3065.1	Incentive Program Reimbursement	0	1	1
3065.3	Performance Standard	0	0	1
3065.4	Retail Labor Rate or Retail Parts Rate	0	0	1
3070	Termination	0	0	0
3070	Modification	0	0	0
3072	Establishment	0	0	0
3072	Relocation	0	0	0
3072	Off-Site Sale	0	0	0
3074	Delivery/Preparation Obligations	0	0	0
3075	Warranty Reimbursement	0	0	0
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-For Resale	0	0	0
3050(b)	Petition	0	0	0
TOTAL CASES:		6	3	25

PENDING CASES

BY CASE NUMBER

ABBREVIATIONS			
ALJ	Administrative Law Judge	Bd. Mtg.	Board Meeting
HRC	Hearing Readiness Conference	IFU	Informal Follow-Up
MH	Merits Hearing	CMH	Continued Merits Hearing
RMH	Resumed Merits Heading	MSC	Mandatory Settlement Conference
CMSC	Continued Mandatory Settlement Conference	RMSC	Resumed Mandatory Settlement Conference
MTCP	Motion to Compel Production	MTC	Motion to Continue
MTD	Motion to Dismiss	PHC	Pre-Hearing Conference
CPHC	Continued Pre-Hearing Conference	RPHC	Resumed Pre-Hearing Conference
PD	Proposed Decision	RFPD	Requests for Production of Documents
PSDO	Proposed Stipulated Decision and Order	ROB	Rulings on Objections
CROB	Continued Rulings on Objections	RROB	Resumed Rulings on Objections
SC	Status Conference	CSC	Continued Status Conference
* Consolidated, non-lead case			

PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
1.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 2-18-25	Motorrad LLC, a California limited liability company dba BMW Motorcycles of San Francisco v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
2.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	Moto Miyako Inc., a California Corporation dba BMW Motorcycles of Burbank v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
3.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	O & O Motorrad, Incorporated, a California Corporation dba San Diego BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
4.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	Central Coast Powersports LLC, a California limited liability company dba BMW Motorcycles of Ventura County v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
5.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	San Jose Motosport, Inc., a California Corporation dba San Jose BMW Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
6.	PR-2775-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	Ride on Powersports, Inc., a California Corporation dba BMW Motorcycles of Riverside v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
7.	PR-2776-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	Motorrad LLC, a California limited liability company dba BMW Motorcycles of Concord v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
8.	PR-2777-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
9.	PR-2778-22* 3-25-22	Parties are working on settlement IFU: 2-18-25	Winner Motorcycles, Limited Liability Company dba BMW Motorcycles of Santa Rosa v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
10.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 2-18-25	SEAVCO, a California corporation dba Irv Seaver Motorcycles v. BMW Motorrad USA Division of BMW of North America, LLC, a Delaware limited liability company	Protestant: Halbert B. Rasmussen Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification

February 2025 Executive Director's Report

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
11.	PR-2803-22 9-15-22	Exchange initial expert reports: 3-7-25 Exchange rebuttal expert reports: 4-11-25 Deposition cutoff: 5-2-25 Remand Hearing: 5-12-25 (3-days)	KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Lauren A. Deeb, Jonathan R. Stulberg	Retail Labor Rate
12.	PR-2808-22 11-14-22	Protest settled at private mediation and should be dismissed soon IFU: 2-27-25	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian Respondent: Steven McFarland, Patrick Quinn, Amy Toboco	Termination
13.	PR-2812-22 11-30-22	RPHC: 2-13-25	San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Lauren A. Deeb, Kevin D'Olivo	Franchisor Incentive
14.	PR-2821-23 5-11-23	IFU: 2-19-25	Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Ashley Fickel, Robert Ellis	Modification

February 2025 Executive Director's Report

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
15.	PR-2826-23 5-25-23	Post-Hearing Briefing pending: Protestant's reply: 3-12-25 Respondent's closing: 4-25-25 Board Meeting: 8-1-25	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr. Respondent: Steve Kelso, Camille Papini-Chapla, April Connally	Warranty
16.	PR-2854-24 2-22-24	Protest settled at private mediation and should be dismissed soon IFU: 2-27-25	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian Respondent: Steven McFarland, Patrick Quinn, Amy Toboco	Termination
17.	PR-2856-24 4-30-24	HRC: 3-3-25 MH: TBD by OAH	IVS NorCal LLC, d/b/a Kuhn INEOS Grenadier v. INEOS Automotive Americas, LLC	Protestant: Gavin Hughes, Robert Mayville Respondent: Lou Chronowski, Michael Educate, Connor Gants, Marlow Svatek, Jim Vogler	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
18.	PR-2858-24 8-13-24	ROB: 3-3-25 HRC: 7-21-25 Hearing: OAH	Jasper Auto Group, Inc. dba Victorville Hyundai, a California corporation v. Hyundai Motor America, a California corporation	Protestant: Victor P. Danhi, Adjoa M. Anim- Appiah, Esq. Respondent: John Streelman, Rachel Sternlieb, Mariah Emmons, Lourdes Escalante	Termination
19.	PR-2859-24 9-13-24	ROB: 3-5-25 HRC: 4-18-25 Bifurcated Hearing: 6-9-25	Raceway Ford, Inc. dba Raceway Ford	Protestant: Gavin Hughes, Robert Mayville Respondent: Elizabeth McNellie, Jeremiah Wood, Marcus McCutchen	Performance Standard
20.	PR-2860-24 12-19-24	MSC: TBD	Sunroad Auto LLC d/b/a Kearny Mesa Kia, California limited liability company v. Kia America, Inc., a California corporation	Protestant: Aaron H. Jacoby, Franjo M. Dolenac, Susanne L. Boniadi Respondent: Lauren A. Deeb Jonathan R. Stulberg	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
21.	PR-2861-25 1-8-25	RPHC: 2-20-25	Mehandroo & Daughters Inc., d/b/a Aaron Mitsubishi v. Mitsubishi Motors North America, Inc.	Protestant: Victor P. Danhi, Adjoa M. Anim-Appiah Respondent: Dean A. Martoccia, Brandon Bigelow	Termination
22.	PR-2862-25 1-23-25	Parties working on dates IFU: 2-24-25	Hanlees Seven, Inc., dba Genesis of Richmond v. Genesis Motor America	Protestant: Gavin Hughes, Robert Mayville Respondent:	Termination
23.	PR-2863-25 1-30-25	PHC: 2-14-25	H & B Group, Inc. dba Nissan of Bakersfield v. Nissan North America, Inc.	Protestant: Gavin Hughes, Robert Mayville Respondent:	Warranty
24.	PR-2864-25 1-29-25	CPHC: 3-6-25	Infiniti of Oxnard, LLC v. Nissan North America, Inc.	Protestant: Edward Siegler Respondent: Steve Kelso, Camille Papini-Chapla, Christopher Mair	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
25.	PR-2865-25 2-10-25	PHC: 2-25-25	DGDG21, LLC, dba Genesis of Stevens Creek v. Genesis Motor America	Protestant: Gavin Hughes, Robert Mayville Respondent: Lauren A. Deeb, Kevin D'Olivo	Termination

PETITIONS

CASE NUMBER/ DATE FILED	STATUS	PETITION NAME	COUNSEL

C. JUDICIAL REVIEW

Either the Protestant/Petitioner/Appellant or Respondent seeks judicial review of the Board's Decision or Final Order by way of a petition for writ of administrative mandamus (Code of Civil Procedure section 1094.5). The writ of mandamus may be denominated a writ of mandate (Code of Civil Procedure section 1084).

1. KPAUTO, LLC, DBA PUTNAM FORD OF SAN MATEO v. CALIFORNIA NEW MOTOR VEHICLE BOARD; FORD MOTOR COMPANY
San Mateo County Superior Court No. 24-CIV-05035
New Motor Vehicle Board No. CRT-283-24
Protest No. PR-2759-21

In December 2021, KPAuto, LLC, dba Putnam Ford of San Mateo's (Putnam Ford) filed a Retail Labor Rate protest pursuant to Vehicle Code section 3065.4. Putnam Ford argued its current warranty labor reimbursement rate was significantly below its effective labor rate charged to retail customers. Putnam Ford requested an adjusted retail rate of \$436.76 per hour in July 2021. Ford Motor Company (Ford) denied this request because it was alleged to be double the rate being charged by other Ford dealers in the market and it claimed the submission was inaccurate or fraudulent. Ford proposed an adjusted retail labor rate of \$220.00. This was an increase from the \$177 per hour retail labor rate.

An 8-day Zoom merits hearing was held before Administrative Law Judge Wim van Rooyen of the Office of Administrative Hearings in September 2023. In the Proposed Decision, the ALJ determined that Ford had shown by a preponderance of the evidence that Putnam Ford's submission and determination of its retail labor rate were materially inaccurate. The Proposed Decision overruled Putnam Ford's protest. At the June 28, 2024, Special Meeting, the Public Members adopted the Proposed Decision as amended as its final Decision.

Putnam Ford filed a Verified Petition for Writ of Administrative Mandate (Petition) on August 12, 2024. The Board was served on August 28, 2024. A copy of the administrative record has been requested and is in process.

Putnam Ford contends that the Board:

- Denied Putnam Ford a fair hearing and prejudicially abused its discretion by failing to proceed in the manner required by law.
- Denied Putnam Ford a fair hearing and violated Putnam Ford's due process rights.
- Prejudicially abused its discretion by failing to proceed in the manner required by law.

Putnam Ford seeks the issuance of a peremptory writ of administrative mandate directing the Board to set aside and vacate its Decision and to adopt and issue a new and different decision sustaining the protest. In the alternative, the issuance of a writ of administrative mandate directing the Board to set aside and vacate its Decision and

remand this case to the Board to consider evidence which in the exercise of reasonable diligence, could not have been produced or that was improperly excluded at the hearing.

President Kassakhian determined that there is not a state interest at issue in the writ so the Board will not participate via the Attorney General's Office.

On September 23, 2024, Petitioner filed Notice of Board's intent not to appear. On October 3, 2024, Real Party in Interest filed its Answer. At the January 22, 2025, hearing on the parties Joint Motion to Seal Exhibit A, the court denied the motion without prejudice. At the January 29, 2025, Case Management and Trial Setting Conference, the parties stipulated to, and the court ordered, the following dates:

- Petitioner's Opening Brief - Friday, April 18, 2025;
- Joint Appendix listing and containing regularly cited portions of the administrative record - Friday, April 18, 2025;
- Real Party in Interest's Opposition Brief - June 20, 2025;
- Petitioner's Reply Brief - Friday, August 8, 2025.

The hearing on the Writ is October 8, 2025, at 2:00 p.m. in Department 28.

NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS

3060/3070 AND 3062/3072

OCTOBER 15, 2024, THROUGH FEBRUARY 11, 2025

These are generally notices relating to termination or modification (Sections 3060 and 3070) and establishment, relocation, or off-site sales (Sections 3062 and 3072).

SECTIONS 3060/3070

Manufacturer	Number of Notices
BMW/Mini	
Ford	
GM (Buick, Cadillac, Chevrolet, GMC)	
Honda/Acura	
Hyundai/Genesis	3
Kia	1
Nissan/Infiniti	1
Stellantis (Chrysler, Jeep, Dodge, RAM,)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	
Toyota/Lexus	
Volkswagen/Audi	
Miscellaneous Car	1
Miscellaneous Motorcycles	9
Miscellaneous Recreational Vehicle	16
Total	31

SECTIONS 3062/3072

Manufacturer	Number of Notices
BMW	
Ford	
GM (Buick, Cadillac, Chevrolet, GMC)	
Honda/Acura	
Hyundai/Genesis	
Kia	
Nissan/Infiniti	1
Stellantis (Chrysler, Jeep, Dodge, RAM)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	
Toyota/Lexus	
Volkswagen/Audi	
Miscellaneous Car	
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	
Total	1