State of California

NEW MOTOR VEHICLE BOARD

INFORMATIONAL GUIDE FOR MANUFACTURERS AND DISTRIBUTORS

February 2011

STATE OF CALIFORNIA

NEW MOTOR VEHICLE BOARD

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February 2011

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INTRODUCTION

This Informational Guide has been prepared to assist manufacturers[1] 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 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 appeals 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 a cost-effective manner.

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[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.

In keeping with its mission, the vast majority of 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."

** 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").

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) 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 Y**
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.	
Send a copy of the notice to the Board, attention William G. Brennan, Executive Director, with a cover memo indicating a contact name and phone number.	
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. 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 similar to 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.

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[3] 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 Y**
Determine if the modification "substantially affects the dealer's sales or service obligations or investment."	
Draft the appropriate notice of modification being mindful of the statutory language outlined above.	
Send the notice to the dealers whose franchise is being modified. It is prudent to send via certified mail, return receipt requested. Nothing is the statute requires this, but the statutory time to file a protest with the Board does not commence until receipt by the dealer.	
Send a copy of the notice to the Board, attention William G. Brennan, Executive Director, with a cover memo indicating a contact name and phone number.	
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** within a relevant market area where the same line-make[4] is then represented, or seeks to relocate an existing motor vehicle dealership, the franchisor shall, in writing,

[3] Vehicle Code section 3070(b)(2) refers to "franchiser" instead of "franchisor". The statutorily required notice sent to impacted recreational vehicle dealers should contain "franchiser" until clean-up legislation is enacted.

[4] 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 Pontiac, Chevrolet, and Cadillac. Each "make", in turn, would be comprised of several "lines" or models, e.g., Chevrolet has Silverado, Impala, 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." Effective January 1, 2009, the proper reference should be 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.

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."

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.

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,[5] 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 is within one (1) mile from, the existing dealership location.

2. The establishment at any location that is **both** within the same city as, and is 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 and the display 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.

There are two additional exceptions that pertain to recreational vehicle dealers only:

1. An annual show sponsored by a national trade association of recreation vehicle manufacturers that complies with Vehicle Code section 11713.15(d). For example, the Pomona Show

[5] Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary." The statutorily required notice sent to impacted RV dealers should continue to reference secretary until clean-up legislation has been chaptered.

sponsored by the Recreation Vehicle Industry Association would be exempt from the Vehicle Code section 3072 notice requirements.

2. A motor vehicle dealership protesting the location of another dealership with the same recreational vehicle line-make within its relevant market area, if the dealership location subject to protest was established on or before January 1, 2004.

What Steps Are Necessary to Issue a Notice of Establishment or Relocation?

Steps Necessary to Issue a Notice of Establishment/Relocation	**Completed** Y
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.	
Send a copy of the notice to the Board, attention William G. Brennan, Executive Director, with a cover memo indicating a contact name and phone number.	
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. After an evidentiary hearing before the Board, the protesting dealer is unable to prove good cause not to allow the establishment or relocation.

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.

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,[6] 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 Certification 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 page 9) 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 within 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, but that no protests have been filed. Even though the Pomona Show or other 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 7), an OL-124 form must be issued by the manufacturer to each dealer participating in the show.

[6] See footnote 5.

STATE OF CALIFORNIA DMV DEPARTMENT OF MOTOR VEHICLES
A Public Service Agency

LICENSING OPERATIONS DIVISION

CERTIFICATE OF PROPOSED FRANCHISE

DMV USE ONLY
DEALER LICENSE 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 within 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 intent to establish an additional motor vehicle dealership or relocate an existing motor vehicle dealership within the relevant market area, and no protests have been filed. (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
PRINT OR TYPE NAME	OWNER OR REPRESENTATIVE LICENSE NUMBER

CALIFORNIA VEHICLE CODE (CVC) - Sections 3062 or 3072*, states 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 within a relevant market area where the same line-make is then 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 to establish an additional dealership or to relocate an existing dealership within or into that market area. Within 20 days of receiving that notice or within 20 days after the end of any appeal procedure provided by the franchisor, any such franchisee may file with the board a protest to the establishing or relocating of the dealership. 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 such 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 shall not establish or relocate the proposed 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 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 any location that is both within the same city as, and is within one mile from, the existing dealership location.

(2) The establishment at any location 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.

*Section 3072, pertaining to Recreational Vehicles, contains virtually identical provisions, however, there are additional exemptions not listed above. Recreational Vehicle Manufacturers are encouraged to review the entire California Vehicle Code Section.

OL 124 (REV. 7/2008) **WWW**

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 REQUIRED 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(b), 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:

1) The OL-124 must reflect the business name and address as it appears on the corresponding application for an Occupational License.
2) The dealer is responsible for submitting the OL-124 with an appropriate application to an Occupational Licensing Inspection's Office.
3) The OL-124 must be signed by an owner of the Manufacturer/Distributor on file with Occupational Licensing or a licensed Representative.
4) 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.
5) 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 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, contact Rodney Aoki, Staff Services Analyst, Occupational Licensing, at (916) 229-4025.

What Steps Are Necessary to Issue a Notice of Off-Site Sale?

Steps Necessary to Issue a Notice of Off-Site Sale	**Completed Y**
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.	
Send a copy of the notice to the Board, attention William G. Brennan, Executive Director, with a cover memo indicating a contact name and phone number.	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

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 not required or there are franchised dealers of the same line-make within the relevant market area but no protests have been filed.

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.

However, the DMV Inspectors will require this information. If you are not sure, contact your local Inspector for guidance.

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.[7] The First Appellate District Court (*British Motor Car Distributors, Ltd., d/b/a Maserati Import Company vs. New Motor Vehicle Board; British Motors of Monterey, Inc., Real Party in Interest* (1987) 239 Cal.Rptr. 280, 286-287) 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 a 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 § 6250 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 sections 3065 and 3075 provide that every franchisor **shall** file a copy of its warranty reimbursement schedule or formula with the Board.

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[7] If a dealer waits an unreasonable period of time 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.

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 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?

Vehicle Code section 11713.3(o) clarifies the limited circumstances in which a manufacturer or distributor may operate or control a dealership within ten miles of an independent, franchised dealer of the same line-make. Specifically, 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 [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 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 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 time-frame 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 similar to 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 Y**
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 (1)).	
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 franshisee 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.[8]

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 in 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 and distributor that owns an interest in a dealer as part of a bona fide dealer development program 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 statute does not specify when the annual notice should be sent to the Board. Every January, the Board staff will continue to remind the industry of this obligation.

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[8] 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 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.

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,[9] 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." Copies of all notices mailed shall be sent to the Board (Civil Code § 1795.92(b)).

What Is the Consequence of Failing to File or to Timely File a Statutorily Required Notice, Schedule, or Formula?

Vehicle Code section 3050(c)(3) gives the Board power 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 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.

[9] 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

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

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[1] 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

[1] Vehicle Code section 3070(b)(2) refers to "franchiser" instead of "franchisor". The statutorily required notice sent to impacted recreational vehicle dealers should contain "franchiser" until clean-up legislation is enacted.

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) or 3072(a))

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,[1] 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

[1] Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary." The statutorily required notice sent to impacted recreational vehicle dealers should continue to reference secretary instead of executive director until clean-up legislation is enacted.

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

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))

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[1], 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

[1] Effective January 1, 2004, the position of Secretary was changed to Executive Director in the Vehicle Code and California Code of Regulations. However, Vehicle Code section 3072 still references "secretary." The statutorily required notice sent to impacted recreational vehicle dealers should continue to reference secretary instead of executive director until clean-up legislation is enacted.
[2] For recreational vehicles, the Pomona 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