



**R O S T E R**  
**NEW MOTOR VEHICLE BOARD**

2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818

<b><u>NAME</u></b>	<b><u>APPOINTING AUTHORITY</u></b>	<b><u>STATUS</u></b>
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
Karthick Ramakrishnan Term exp. 1-15-27	Speaker of the Assembly	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

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Sacramento, California 95818  
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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**A G E N D A**  
**GENERAL MEETING**

Department of Motor Vehicles  
2415 1<sup>st</sup> Avenue  
Assembly Room 6<sup>th</sup> Floor  
Sacramento, California 95818  
(916) 445-1888

April 25, 2024

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)

The meeting is being held at the Department of Motor Vehicles' Headquarters in Sacramento located between Broadway and 24<sup>th</sup> Street. Attendees need to check in at the security desk on the 1<sup>st</sup> floor to receive a visitor's badge. Guest parking passes are available in advance by emailing the Board at [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov) or can be requested on the day of the meeting in the lobby. Board staff will be available to answer any questions and escort attendees from the lobby to the meeting room.

1. **8:30 a.m. -- Meeting called to order.**
2. **Roll Call.**
3. **Pledge of Allegiance.**
4. **Update on the California State Transportation Agency (CalSTA) by Undersecretary Mark Tollefson - Board Development Committee.**

5. **Board Member education concerning Statement of Incompatible Activities (Gov. Code §§ 19572, 19990; *Fisher v. State Personnel Bd.* (2018) 25 Cal. App. 5th 1), examples of activities that are incompatible, conflicts of interest (Gov. Code § 87100, et seq.), and ethics and disclosure rules by John T. McGlothlin, Deputy Attorney General assigned to the Board - Board Development Committee.**
6. **Approval of the Minutes from the December 8, 2023, General Meeting.**
7. **2024 Election of Board President and Vice President - Executive Committee.**
8. **Annual review and appointment of Committee members to the Administration Committee, Board Development Committee, Fiscal Committee, Government and Industry Affairs Committee, Legislative Committee, Policy and Procedure Committee, and Ad Hoc Committee on Equity, Justice and Inclusion, by the incoming Board President.**
9. **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.**
10. **Consideration of presentation of Resolution to Ryan Fitzpatrick, former Dealer Board Member.**
11. **Consideration of presentation of Resolution to the California New Car Dealers Association to commemorate their 100<sup>th</sup> Anniversary.**
12. **Discussion of the Budget Letter (BL 23-27) dated December 12, 2023 pertaining to Current Year Expenditure Freeze, and its impact on the Board's operations.**
13. **Discussion and consideration of activities and events commemorating the New Motor Vehicle Board's 50<sup>th</sup> anniversary (July 1, 2024).**
14. **Discussion and consideration of the Board's Strategic Plan July 2024 - June 2030 - Executive Committee.**
  - a. Discussion and consideration of written public comments received in response to the Board's Public Notice dated February 2024.
  - b. Additional public comments. (Gov. Code § 11125.7)
  - c. Discussion and consideration of the draft Strategic Plan, which includes the following objectives:
    - (1) Improve outcomes for all motor vehicle consumers.
    - (2) Contribute to the advancement of the California State Transportation

Agency's Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity.

- (3) Transform our organization to become more resilient and conserve limited resources.
  - (4) Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders.
- d. Discussion and consideration of authorization of discretion to the Executive Director to implement action items responsive to the objectives noted above.
15. **Discussion of plans to fill the vacant Assistant Executive Officer position, including consideration of the position classification, duties, title, and recruitment strategies - Administration Committee.**
  16. **Consideration of the revised *Guide to the New Motor Vehicle Board* to include information on statutory and regulatory changes - Administration Committee.**
  17. **Update on Board Development Activities - Board Development Committee.**
  18. **Board member education concerning changes to the Administrative Procedure Act and Bagley-Keene Open Meeting Act - Board Development Committee.**
  19. **Board member education concerning changes to the Political Reform Act and Public Records Act - Board Development Committee.**
  20. **Report on the Board's financial condition for the 1<sup>st</sup> quarter of Fiscal Year 2023-2024 and other related fiscal matters - Fiscal Committee.**
  21. **Discussion of the 2024 New Motor Vehicle Board Industry Roundtable focusing on industry services - Government and Industry Affairs Committee.**
  22. **Update on the 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 - Government and Industry Affairs Committee.**
  23. **Discussion concerning pending legislation - Legislative Committee.**
  24. **Annual report concerning Board adopted policies - Policy and Procedure Committee.**
  25. **Annual report on the assignment of cases to Administrative Law Judges - Policy and Procedure Committee.**

26. **Consideration of the *Export or Sale-For-Resale Prohibition Policy Protest Guide* (Vehicle Code section 3085, et seq.) - Policy and Procedure Committee.**
27. **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.**
28. **Discussion and consideration of proposed regulatory amendments to the definition of Administrative Law Judge in subdivision (a) of Section 550 of Title 13 of the California Code of Regulations (Definitions) 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 - Policy and Procedure Committee.**
29. **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.
30. **Selection of Board meeting dates for the remainder of 2024.**
31. **Presentation of the Department of Motor Vehicle's Report of Investigation regarding whether Subaru of America, Inc. violated Vehicle Code sections 3060, 11713.3(d)(1), and 11713.3(l).**

COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO v. SUBARU OF AMERICA, INC.  
Petition No. P-463-22

Discussion of the Department of Motor Vehicle's Report of Investigation finding that based on documentary evidence and witness interviews, violations of Sections 3060, 11713.3(d)(1), and 11713.3(l) were not established, by the Public Members of the Board.

32. **Public Comment. (Gov. Code § 11125.7)**

**33. 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](mailto:Alejandro.martinez2@dmv.ca.gov).



## Memorandum

Date : **APRIL 11, 2024**

To : **ALL BOARD MEMBERS**

From : **TIMOTHY M. CORCORAN**

Subject : **UPCOMING EVENTS**

The following highlights the upcoming Board and industry events:

- April 25, 2024, General Meeting (Sacramento)
- June 19 - July 2, 2024, Special Meeting to consider a Proposed Decision (location to be determined)
- August 5-20, 2024, Special Meeting to consider a Proposed Decision (location to be determined)
- September 22-29, 2024, AAMVA (American Association of Motor Vehicle Administrators) and NAMVBC (National Association of Motor Vehicle Boards and Commissions) Conference (Atlanta, Georgia)
- Industry Roundtable (date/location to be determined)
- Fall 2024, General Meeting (date/location to be determined)

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.



PRINT OR TYPE  
LAST 4 DIGITS OF YOUR SOCIAL SECURITY NUMBER \_\_\_\_\_

EMPLOYEE'S NAME \_\_\_\_\_

## STATEMENT OF INCOMPATIBLE ACTIVITIES

It is the policy of the Department of Motor Vehicles (DMV) that all employees comply with **Government Code §19990** pertaining to employee conduct. Furthermore, DMV employees may be subject to disciplinary action for causes and conduct delineated in **Government Code §19572**. Employees shall not engage in any employment, activity, or enterprise, which is clearly inconsistent with, incompatible with, in conflict with, or inimical (detrimental) to their duties. All state officers and employees of the DMV are expected to comply with this policy during their employment.

Effective January 1, 2005, the following activities constitute the grounds for which an employee may be subject to disciplinary action. The department also reserves the right to request that criminal charges be filed for violations.

**A. Government Code §19572** - Section 19572 provides for disciplinary action against an employee or person whose name appears on any employment list. The causes include: fraud in securing appointment; incompetency; inefficiency; inexcusable neglect of duty; insubordination; dishonesty; drunkenness on duty; intemperance; addiction to the use of controlled substances; inexcusable absence without leave; conviction of a felony or conviction of a misdemeanor involving moral turpitude, a plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section; immorality; discourteous treatment of the public or other employees; improper political activity; willful disobedience; misuse of state property; refusal to take any oath or affirmation required by law as a condition of employment; the use, during duty hours, for training or target practice of any material which is not authorized by the appointing power; unlawful discrimination, including harassment, on any basis listed in subdivision (a) of **Government Code §12940**, as those bases are defined in §§12926 and 12926.1, against the public or other employees while acting in the capacity of a state employee; unlawful retaliation against any other state officer, employee or member of the public who in good faith reports, discloses, divulges, or otherwise brings to the attention of, the Attorney General or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this state or the United States occurring on the job or directly related to the job; other failure of good behavior during or outside of duty hours which is of such a nature that it causes discredit to the department; and violation of the prohibitions set forth in accordance with **Government Code §19990**.

**B. Government Code §19990** - Section 19990 provides that a state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical (detrimental) to their duties as a state officer or employee.

1. Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain, or advantage or the private gain of another.
2. Using state time, facilities, equipment, or supplies for private gain or advantage.
3. Using, or having access to confidential information, available by virtue of state employment, for private gain or advantage, or providing confidential information to persons to whom issuance of this information has not been authorized.
4. Receiving or accepting money or any other consideration from anyone other than the state for the performance of their duties as a state officer or employee.
5. Performance of an act in other than their capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly, to the control, inspection, review, audit, or enforcement by the officer or employee.
6. Receiving or accepting, directly or indirectly, any gift, including money or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority, or whose activities are regulated or controlled by the department under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in their official duties or was intended as a reward for any official actions performed by the officer or employee.
7. Subject to any other laws, rules, or regulations, not devoting their full time, attention, and efforts to their state office or employment during their hours of duty as a state officer or employee.



## STATEMENT OF INCOMPATIBLE ACTIVITIES

**C. Additional Authorization** - In addition to the provisions of **Government Code §§19572 and 19990**, the director of the DMV may define or determine activities which, for employees of the department, are inconsistent, incompatible or in conflict with their duties as departmental employees. These prohibited activities and enterprises are:

1. Using their employment at the department (e.g., symbol, badge, identification card, records, information, etc.) to obtain any special treatment or favors, either during or outside office hours.
2. Using their working hours, state facilities, equipment, or materials for private activities.
3. Accessing, selling, altering, or sharing vehicle registration, driver license, or any type of confidential information, except as part of their duties. Employees cannot reveal confidential information acquired as a result of working for the state before the information is made public; nor can employees reveal confidential management information used as the basis for decision-making.
4. Processing, controlling, inspecting, reviewing, auditing, or enforcing in their capacity as a state employee, any type of act, document, or transaction (e.g., registration, driver license, personnel, payroll, etc.) for themselves, family, an individual with whom the employee has a close personal relationship, coworker, or an outside entity in which the employee has a material financial interest. Employees that have any documents or transactions that need to be processed, reviewed, or audited will submit the documents or transactions to their unit manager. The unit manager will assign the work to a technician of their choosing. Exceptions may be granted to accommodate circumstances such as for employees working in field offices located in smaller communities where prohibiting the processing of a document or transaction may be impractical.

Personal relationship means any relationship so personal that other DMV employees may reasonably perceive that one of the employees may be motivated to treat the other one more favorably than other employees for reasons other than prior job performance, work history or job qualifications. That includes, but is not limited to, any familial relationship established by blood, adoption, marriage, or registered domestic partnership. For the purpose of this policy, personal relationships are not limited to familial relationships, but also include employees who reside together or have other close personal bonds. Family includes spouses, parents, brothers, sisters, children, stepchildren, grandparents, aunts, uncles, nieces, nephews, cousins, parents-in-law, grandparents-in-law, daughters-in-law, sons-in-law, sisters-in-law, brothers-in-law, or individuals who reside in the same household.

5. Supervisory employees shall not use their authority to influence any other employee to perform any act that would violate section C.4 of this document.
6. Purchasing goods or services at special discounts or special concessions from businesses or agents who operate under certificates or licenses issued by the department, or businesses which do business with the department, unless the same discounts/concessions are also generally available to other state employees. For example, employees cannot accept discounts from such businesses as automobile dealerships, driving schools, or dismantlers unless the same discounts are also generally available to other state employees.
7. Engaging in or having a material financial interest in any outside activity/employment (e.g., owning, receiving income from, being employed by, etc.), which is clearly inconsistent, incompatible, in conflict with or inimical (detrimental) to their duties at the department. These duties include, but are not limited to:
  - a. Processing and/or reviewing registration documents.
  - b. Processing and/or reviewing driver license documents.
  - c. Conducting driver license examinations and/or driver safety reviews.
  - d. Auditing outside entities.
  - e. Procuring merchandise/services for the department.
  - f. Processing and/or reviewing contractual documents.
  - g. Making vehicle inspections, engine verifications, or vehicle appraisals.
  - h. Holding positions which may influence such duties.

## STATEMENT OF INCOMPATIBLE ACTIVITIES

Examples of activities which are incompatible include, but are not limited to:

- (1.) Employees whose duties include processing driver license transactions are prohibited from owning, being employed by, or having a material financial interest in a private driving school.
  - (2.) Employees whose duties include processing or reviewing procurement documents are prohibited from owning, being employed by, or having a material financial interest in a business that sells materials or services to the department.
  - (3.) Employees whose duties include processing registration documents are prohibited from owning, being employed by, or having a material financial interest in a business which has been delegated to process these transactions (e.g., registration services, motor vehicle dealers, dismantlers, etc.).
8. Soliciting or receiving any kind of political contribution in connection with department-related activities, or using any official authority/influence in order to coerce the vote, contribution, or political action of any state employee or person on an employment list.

Employees can be politically active as long as they do so as a private citizen and not, in the course of those activities, present themselves as representing DMV. Departmental offices cannot display political signs or symbols. All supervisors and managers must refrain from influencing the political decisions of their employees.

9. Accepting anything from any customer or client or potential customer or client if the purpose is to obtain special favors, faster service, exception processing, or advantage not available to other customers or potential customers. However, a representative of the department, designated by the Director, may accept, on behalf of the department, awards, certificates of appreciation, and commendations that are not of a quid pro quo nature and have monetary value attached.

If an employee is engaged in or intends to enter into an activity that could be considered incompatible or any activity associated with a departmental program or licensee, the employee shall bring that activity to the immediate attention of their supervisor. It will be the supervisor's responsibility to determine whether the activity is incompatible. Employees may appeal the prohibitions contained in this statement. Appeals must be in writing and branch/regional level management will conduct the first review. Deputy Directors will be the second and final level of appeal.

If the provisions of this statement are in conflict with the provisions of a memorandum of understanding reached pursuant to **Government Code §3517.5**, the memorandum of understanding will be controlling.

***I have read the foregoing Statement of Incompatible Activities and understand that I may be subject to disciplinary action and/or criminal charges for any violation of the prohibitions contained herein.***

\_\_\_\_\_  
EMPLOYEE SIGNATURE

\_\_\_\_\_  
DATE

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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD  
**MINUTES**

The New Motor Vehicle Board (“Board”) held a General meeting on December 8, 2023, via Zoom and teleconference. Jacob Stevens, Vice President and Public Member, called the meeting of the Board to order at 9:36 a.m.

Vice President Stevens welcomed everyone to the meeting and stated that the meeting materials are available on the Board’s website and hard copies of the materials can be requested by contacting the Board’s legal staff at (916) 445-1888 or [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov). Vice President Stevens also set forth the parameters for the meeting.

2. **ROLL CALL**

Board Members Present: Anne Smith Boland  
Ashley Dena (arrived 9:39 a.m.)  
Kathryn Ellen Doi  
Bismarck Obando (arrived 9:52 a.m.)  
Karthick Ramakrishnan  
Brady Schmidt  
Jacob Stevens

Board Members Not Present: Ryan Fitzpatrick  
Ardashes “Ardy” Kassakhian

Board Staff Present: Timothy M. Corcoran, Executive Director  
Robin P. Parker, Chief Counsel  
Jason Rose, Senior Staff Counsel  
Suzanne Luke, Administrative Services Analyst  
Alex Martinez, Staff Services Analyst  
Navpreet (Penny) Bhatti, Mediator Analyst  
Rabia Sadiq, Mediator Analyst

Anthony M. Skrocki, Administrative Law Judge  
Tammy Bayne, Administrative Law Judge

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

3. **INTRODUCTION AND WELCOME OF NEWLY APPOINTED PUBLIC BOARD MEMBER KARTHICK RAMAKRISHNAN**

Vice President Stevens welcomed newly appointed Public Member Karthick Ramakrishnan. Member Ramakrishnan commented that he is a professor of public policy at the University of California, Riverside. He is thrilled to be at his first meeting as he was out of the country for the last meeting. Member Ramakrishnan noted that prior to this he served as chair of the California Commission on Asian and Pacific Islander Affairs. For two and a half years, he was the director of California 100, which was an ambitious initiative to think about California's long-term future. Member Ramakrishnan had the privilege of learning about many issues ranging from transportation to housing and the future of work, the economy, business, and climate. He hopes to bring these experiences and judgment to the work at the Board.

Vice President Stevens expressed the Board's appreciation as new motor vehicle sales touch on all of those different policy areas that Member Ramakrishnan mentioned.

4. **APPROVAL OF THE MINUTES FROM THE APRIL 28, 2023, AND SEPTEMBER 21, 2023, GENERAL MEETINGS, AND MAY 23, 2023, MEETING OF THE AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION**

Member Doi moved to adopt the April 28, 2023, and September 21, 2023, General meeting minutes, and May 23, 2023, Ad Hoc Committee on Equity, Justice and Inclusion meeting minutes. Member Schmidt seconded the motion. Member Ramakrishnan abstained from voting. The motion carried unanimously.

5. **DISCUSSION AND CONSIDERATION OF ACTIVITIES AND EVENTS COMMEMORATING THE NEW MOTOR VEHICLE BOARD'S 50<sup>TH</sup> ANNIVERSARY (JULY 1, 2024)**

Mr. Corcoran discussed the activities and events commemorating the Board's 50<sup>th</sup> anniversary. The members were provided with four options to change the Board's logo to commemorate the 50<sup>th</sup> anniversary beginning in July 2024. Mr. Corcoran thanked Penny Bhatti for her work with DMV to create the logo options.

Vice President Stevens solicited input from the members on their preferences. After discussing several options, Mr. Corcoran commented that the Industry Roundtable in 2024 could be marketed using the anniversary logo and perhaps the entire event could be on the Board's 50<sup>th</sup> anniversary. Mr. Corcoran remarked that he was requesting direction and discretion from the Board to incorporate the members suggestions by adding "Years" to option 2 and using it to market the Industry Roundtable and then option 4 for the Board's general purpose. After discussing this matter and considering several options, Member Ramakrishnan moved to approve Option 2 with the addition of "years" in the banner after "50" and Option 4. These two logos could be used for different purposes depending on the use and audience. Vice President Stevens seconded the

motion. The motion carried unanimously.

At Vice President Stevens' suggestion, the new logos will be circulated to the members for their Zoom background.

The approved logos are:

**Option 2**



**Option 4**



6. **REPORT ON THE NATIONAL ASSOCIATION OF MOTOR VEHICLE BOARDS AND COMMISSIONS (NAMVBC) FALL CONFERENCE BY TIM CORCORAN, EXECUTIVE DIRECTOR AND BISMARCK OBANDO, PUBLIC MEMBER - BOARD DEVELOPMENT COMMITTEE**

Mr. Corcoran discussed the value to the Board in attending the NAMVBC conference that is now held in conjunction with AAMVA (American Association of Motor Vehicle Administrators). It is an opportunity to connect with other entities such as the National Highway Traffic Safety Administration (NHTSA). These connections are helpful for the Core Four Safety Initiative (OKR) related to the Takata air bag recall and increasing consumer awareness and remediation. Member Obando noted this was the second annual conference he attended on behalf of the Board and found it useful. In terms of electric vehicles, he commented that California is ahead of other states. He also enjoyed connecting with the California attorneys and California New Car Dealers Association.

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

7. **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 the location of the February 22, 2024, General Meeting will be unique and full of educational content. (This meeting date was subsequently changed to April 25, 2024.) Member Schmidt remarked that he is looking forward to the meeting. Vice President Stevens encouraged more education.

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

8. **REPORT ON THE BOARD'S FINANCIAL CONDITION FOR THE 4<sup>TH</sup> QUARTER OF FISCAL YEAR 2022-2023 AND RELATED FISCAL MATTERS - FISCAL COMMITTEE**

The members were provided with a memo from Tim Corcoran and Suzanne Luke. As indicated in the memo, the fourth quarter of Fiscal Year 2022-2023 began with a budget appropriation of \$2.03 million, ending with \$2.9 million reserve balance. Eighty-three percent (83%) of the appropriated budget for the 2022-2023 fiscal year was expended. Staff do not see a need for fee structure adjustments.

Ms. Luke indicated that the annual collection of fees from manufacturers and distributors began in July. Staff have collected \$766,648.00 of the \$766,948.00 from manufacturers and distributors under the Board's jurisdiction.

Vice President Stevens inquired about the fees being paid by credit card. Ms. Luke noted the payments were by check. Mr. Corcoran indicated that the contract for the vendor processing the Board's credit card payments expired so staff are in the process of looking at new vendors based on the Board's needs. In response to Member Doi's questions, Mr. Corcoran said the available vendors are on lists provided by the Department of General Services and available to all State agencies. Although, the Board may need to contract separately to meet its needs.

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

9. **DISCUSSION AND CONSIDERATION OF THE 2024 NEW MOTOR VEHICLE BOARD INDUSTRY ROUNDTABLE FOCUSING ON INDUSTRY SERVICES - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Mr. Corcoran discussed the 2024 Industry Roundtable. This event will focus on industry services including the Board's use of the Office of Administrative Hearings (OAH) for its merits hearings and the Department of Motor Vehicles DXP (Digital eXperience Platform) for digital license renewal. Mr. Corcoran in conjunction with the Committee is in the process of developing topics and welcomes ideas from the members. Feedback will be sought from the industry in advance of the Roundtable on the Department's DXP project. An additional opportunity to include California State Transportation Agency's Core Four (OKR's) includes working with dealers and manufacturers on best practices for the sale of electric vehicles.

Anthony Bento on behalf of the California New Car Dealers Association indicated that they are happy to partner with the Board on this. He noted there are lots of challenges and opportunities with the sale of electric vehicles.

Member Ramakrishnan suggested highlighting long-term cost savings to consumers in promotional materials and providing information on other items such as the wear on tires so there are no surprises.

Member Doi suggested that other states who might have an interest in attending the Roundtable be invited if the format is Zoom or a hybrid. Also, a short video of the history of the New Motor Vehicle Board could open the event. Vice President Stevens added that a history of the evolution of cars over the past 50 years would be interesting.

After a brief discussion on proposed dates, this matter will be agendaized for the next meeting. Mr. Corcoran will provide suggested dates.

Ms. Parker indicated that it would not be possible to discuss the transition to OAH if the Roundtable were held in June as the first Proposed Decision in an OAH hearing won't be considered by the Public Members until the June 13, 2024, General Meeting. With that in mind, Member Doi suggested this topic be postponed until the 2025 Industry Roundtable.

Mr. Corcoran thanked Member Smith Boland for her assistance as chair of the Government and Industry Affairs Committee.

10. **UPDATE ON THE 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 - GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE**

Mr. Corcoran provided an updated on the 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. He reiterated that up to 750,000 vehicles in California are subject to the recall and many of the vehicles are in underrepresented communities. Mr. Corcoran envisioned a two-day event with a demonstration to solicit input on how best to increase the number of repaired vehicles. Day 1 would include stakeholders discussing from their perspectives the barriers to getting these vehicles repaired. Day 2 would discuss creative strategies aimed at completing these repairs.

Vice President Stevens thanked Members Smith Boland and Fitzpatrick for their work on this event.

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

11. **DISCUSSION CONCERNING ENACTED AND PENDING LEGISLATION - LEGISLATIVE COMMITTEE**

- a. Enacted Legislation of Special Interest:

- (1) Assembly Bill 473 (Assembly Member Aguiar-Curry; Ch. 332, Stats. 2023) - Motor vehicle manufacturers, distributors, and dealers.
- b. Enacted Legislation of General Interest:
  - (1) Senate Bill 544 (Senator Laird; Ch. 216, Stats. 2023) - Bagley-Keene Open Meeting Act: teleconference.
- c. Pending Federal Legislation of General Interest:
  - (1) United States House of Representative Bill 1435 (Representative John Joyce) - Preserving Choice in Vehicle Purchases Act.
  - (2) United States Senate Bill 2090 (Senator Markwayne Mullin) - Preserving Choice in Vehicle Purchases Act of 2023.

The members were provided with a memo from Tim Corcoran and Robin Parker concerning enacted and pending legislation. Ms. Parker reported that the Board staff were beginning to implement the provisions in Assembly Bill 473, which added three new protests in Vehicle Code section 3065.3. She noted that the promulgation of regulations will not be necessary. Most updates will be completed in January 2024 and the members will consider revised publications at the February 22, 2024, General Meeting. (Subsequently change to April 25, 2024.) Future updates will not include the Pending Federal Legislation of General Interest. However, the staff will continue to monitor these bills.

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

## 12. **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 Board's impending move to its new facility at the Department of Motor Vehicle's headquarters in Sacramento. The demolition will begin soon and the use of modular furniture should speed up the renovation. Mr. Corcoran indicated the draft Strategic Plan will be reviewed by the Executive Committee in January 2024. In advance of this, Mr. Corcoran engaged the team and solicited feedback on the Board's strengths, weaknesses, and threats. The Strategic Plan will be longer than other agencies as Mr. Corcoran is targeting a 6-year Strategic Plan for a couple of reasons: (1) this is the first one the Board has drafted so a longer time period allows the Board to implement these proposals and builds in metrics to monitor and make adjustments as needed; and (2) it aligns with Mr. Corcoran's intended retirement.



Jason Rose, Senior Staff Counsel, was formerly introduced to the Board by Mr. Corcoran. Alex Martinez (Legal Analyst) and ALJs Skrocki and Bayne were also welcomed by Mr. Corcoran.

Mr. Rose reported that the Ford relocation protests were consolidated and the parties are working on a discovery and hearing schedule. In the new modification protest against Toyota, the notice was withdrawn so dismissal of the protest was anticipated.

Ms. Parker indicated that four protests were closed since the members received the Executive Director's Report. A total of 46 protests were closed year-to-date. The Proposed Decision in the matter heard by OAH will be considered by the Public Members at the June 13, 2024, General Meeting (PR-2759-21 *KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company*). The merits hearing in PR-2803-22 *KM3G, Inc. d/b/a Putnam Kia of Burlingame v. Kia America, Inc.* will resume the week of February 12, 2024. As a year-end wrap up, Ms. Parker indicated that 19 termination notices and 366 modification notices were issued this year. These numbers were 18 and 793, respectively in 2022. To date, 33 protests were filed. By comparison, 55 protests and one petition were filed in 2022.

No update to judicial matters was provided as these matters have been resolved.

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

13. **DISCUSSION AND CONSIDERATION OF THE DEPARTMENT OF MOTOR VEHICLES' REQUEST FOR AN EXTENSION OF TIME UNTIL JANUARY 31, 2024 TO INVESTIGATE AND ISSUE A REPORT, BY THE PUBLIC MEMBERS OF THE BOARD**

COURTESY AUTOMOTIVE GROUP, INC., dba COURTESY SUBARU OF CHICO v. SUBARU OF AMERICA, INC.  
Petition No. P-463-22

Consideration of the Department of Motor Vehicles' request for an extension of time, by the Public Members of the Board.

Vice President Stevens reminded the Dealer Members in attendance, that only the Public Members will consider this matter because the petition involves a dispute between a franchisee and a franchisor and confirmed the Public Member quorum. This discussion was held in Open Session.

On September 19, 2023, the Department of Motor Vehicles ("Department") requested an extension of the time permitted (180 days from January 26, 2023, or a reasonable time as requested by the Department) to investigate and issue a report. The request noted the Department is conducting an on-going inquiry into the allegations and issues. The Investigations Division anticipates their investigation will conclude and a report of their findings will be available in late January. Therefore, the Department requested an extension of time until January 31, 2024.

No appearances were made and no public comments presented.

Member Doi commented that she did not think the Board had any choice but to grant the request for extension because otherwise the matter cannot move forward. Therefore, Member Doi moved to grant the Department's extension until January 31, 2024. Member Ramakrishnan seconded the motion. The motion carried unanimously.

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

No additional public comment was presented.

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

SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA v. MITSUBISHI MOTORS NORTH AMERICA, INC.

Protest Nos. PR-2819-23

This matter was dismissed on November 28, 2023, so this matter was removed from the agenda.

16. **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.

**CONSIDERATION OF PROPOSED ORDER**

SORAYA, INC., DBA AUTO GALLERY MITSUBISHI - MURRIETA v. MITSUBISHI MOTORS NORTH AMERICA, INC.

Protest Nos. PR-2819-23

Consideration of the Administration Law Judge's Proposed Order Granting Respondent's Motion to Dismiss or, in the Alternative, for Summary Adjudication, by the Public Members of the Board.

This matter was dismissed on November 28, 2023, so this matter was removed from the agenda.

17. **OPEN SESSION**

The members remained in open session.

18. **ADJOURNMENT**

The members offered each other and the staff their thanks and holiday wishes.

With no further business to discuss, the meeting was adjourned at approximately 10:48 a.m.

Submitted by

\_\_\_\_\_  
TIMOTHY M. CORCORAN  
Executive Director

APPROVED: \_\_\_\_\_  
Jacob Stevens  
Vice President  
New Motor Vehicle Board



## Memorandum

Date : **APRIL 11, 2024**

To : **NEW MOTOR VEHICLE BOARD**

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

Subject : **COMMITTEE ASSIGNMENTS**

At the April 25, 2024, General Meeting, we are going to review committee assignments.

The current committee assignments are as follows:

ADMINISTRATION COMMITTEE

Bismarck Obando, Chair  
Vacant, Member

BOARD DEVELOPMENT COMMITTEE

Kathryn Ellen Doi, Chair  
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  
Vacant, Member

LEGISLATIVE COMMITTEE

Ardy Kassakhian, President  
Jake Stevens, Vice President

POLICY AND PROCEDURE COMMITTEE

Jake Stevens, Chair

Kathryn Ellen Doi, Member

AD HOC DELEGATED COMMITTEE ON EQUITY, JUSTICE AND INCLUSION

Anne Smith Boland, Chair

Ashley Dena, Member

Kathryn Ellen Doi, Member

Bismarck Obando, Member

Jake Stevens, Member

The description of the standing committees are as follows:

- **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.
- **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.
- **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 : **APRIL 2, 2024**

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

Board Designee

Page 2

April 2, 2024

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 April 25, 2024, 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 participates<sup>1</sup>. 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

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<sup>1</sup> 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*, Mr. Ryan Fitzpatrick was appointed to the Board in July 2021, by Governor Gavin Newsom, to serve as a dealer member of the **NEW MOTOR VEHICLE BOARD**; and,

**W** *HEREAS*, Mr. Fitzpatrick served as Chair of the Administration Committee as well as member of the Government and Industry Affairs Committee and Administration Committee and distinguished himself thereby; and,

**W** *HEREAS*, Mr. Fitzpatrick actively engaged in the Board’s business by providing sound advice and leadership, was thoughtful, affable and outgoing to staff and fellow members; and,

**W** *HEREAS*, the foremost concern of Mr. Fitzpatrick 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. Fitzpatrick 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 each and every member of the **NEW MOTOR VEHICLE BOARD** joins in expressing their profound appreciation to Mr. Ryan Fitzpatrick for his contribution to the Board, to the motor vehicle industry and to the people of the State of California.

*Dated this 25<sup>th</sup> day of April 2024*

\_\_\_\_\_  
ARDASHES “ARDY” KASSAKHIAN, PRESIDENT

\_\_\_\_\_  
JACOB STEVENS, VICE PRESIDENT

\_\_\_\_\_  
ANNE SMITH BOLAND MEMBER

\_\_\_\_\_  
ASHLEY DENA, MEMBER

\_\_\_\_\_  
KATHRYN ELLEN DOI, MEMBER

\_\_\_\_\_  
BISMARCK OBANDO, MEMBER

\_\_\_\_\_  
KARTHICK RAMAKRISHNAN, MEMBER

\_\_\_\_\_  
BRADY SCHMIDT, MEMBER



# *New Motor Vehicle Board* **RESOLUTION**

**W***HEREAS*, the California New Car Dealers Association (CNCDA) is celebrating 100 years of protecting and promoting the interests of California’s franchised new car dealers; and,

**W***HEREAS*, the CNCDA is the Nation’s largest State Automobile Dealer Association representing nearly 1,300 franchised new car and truck dealers throughout California. Its members are primarily engaged in the retail sale and lease of new vehicles and also engage in automotive service, repair, and parts sales; and,

**W***HEREAS*, the CNCDA focuses on protecting and promoting the interests of franchised new car dealers before all state government and regulatory agencies. Works to create a business-friendly climate where new car dealers can thrive, provide the best products and services to consumers and maintain high employment rates are all of critical importance to CNCDA and its members; and,

**W***HEREAS*, the CNCDA’s members and staff have assisted and supported the New Motor Vehicle Board (Board) throughout the years in many ways, such as guiding important legislation impacting the Board through the California Legislature; advocating the importance of the Board to elected officials, the auto industry, and new vehicle dealers; generously sharing CNCDA training resources and data; and actively participating in Board meetings and Roundtable events; and

**T***HEREFORE, BE IT RESOLVED* that each and every member of the **NEW MOTOR VEHICLE BOARD** joins in expressing their profound appreciation to California New Car Dealers Association for its contribution to the Board, to the motor vehicle industry, and to the people of the State of California.

*Dated this 25<sup>th</sup> day of April 2024*

\_\_\_\_\_  
ARDASHES “ARDY” KASSAKHIAN, PRESIDENT

\_\_\_\_\_  
JACOB STEVENS, VICE PRESIDENT

\_\_\_\_\_  
ANNE SMITH BOLAND MEMBER

\_\_\_\_\_  
ASHLEY DENA, MEMBER

\_\_\_\_\_  
KATHRYN ELLEN DOI, MEMBER

\_\_\_\_\_  
BISMARCK OBANDO, MEMBER

\_\_\_\_\_  
KARTHICK RAMAKRISHNAN, MEMBER

\_\_\_\_\_  
BRADY SCHMIDT, MEMBER

# BUDGET LETTER

	NUMBER: BL 23-27
SUBJECT: CURRENT YEAR EXPENDITURE FREEZE	DATE ISSUED: December 12, 2023
REFERENCES: N/A	SUPERSEDES: N/A

TO: Agency Secretaries  
Department Directors  
Department Budget and Accounting Officers  
Departmental Human Resources and Labor Relations Officers  
Departmental Business Services Officers  
Department of Finance Budget and Accounting Staff

FROM: DEPARTMENT OF FINANCE

Budget Officers are requested to forward a copy of this budget letter (BL) to departmental Human Resources, Labor Relations, and Business Services Officers.

The State of California anticipates significant General Fund budget deficits in fiscal years 2023-24 and 2024-25. Accordingly, this BL directs all entities under the Governor's direct executive authority to take immediate action to reduce current-year General Fund expenditures. Departments shall also take measures to ensure more prudent spending from other state funds given the fiscal outlook. Statewide Constitutional Officers are strongly encouraged to comply with the provisions of this BL.

It is vitally important that state government is efficient, effective, and only expends funds that are necessary to the critical operation and security of the state. As such, all state entities must take immediate action to reduce expenditures and identify all operational savings achieved. These immediate actions consist of, but are not necessarily limited to, the following:

- New Goods and Services Contracts—Departments shall not enter into any new contracts or agreements to lease or purchase equipment, issue purchase orders for goods or services, or make changes to existing contracts if the change would increase costs, except to meet a time-sensitive or critical need.
- IT Equipment—All discretionary and non-essential IT purchases, unless specifically related to a critical IT security need or a mission-critical need, shall be halted. This includes all planned IT equipment refreshes, copier or printer replacements, or any new equipment purchases (e.g., cell phone refreshes).
- Fleet Vehicles—Only mission-critical or emergency-related vehicles shall be purchased. All other planned vehicle replacements should be halted.

- Office Supplies—Minimal office supplies shall be ordered and kept in stock. Each department's purchasing managers should heavily scrutinize all office supply orders to ensure the need. Departments shall, to the extent possible, use all existing supplies before additional supplies are ordered.
- Other—All areas of department operations shall be evaluated and scrutinized to decrease costs including, but not limited to, subscription renewals, training costs, or furniture purchases.
- Travel—State entities shall cancel all plans for non-essential travel, such as participation in seminars, conferences, and training both in-state and out-of-state. Only travel that is *required* for the conduct of official state business is allowed.
- Leave Buy-Back—The annual leave buy-back of accrued vacation or annual leave in 2023-24, including for excluded employees is cancelled. An exception is noted for Bargaining Unit 6.
- Architectural Revolving Fund (ARF)—State entities shall delay or defer any requests to transfer funds to the ARF unless for a demonstrated critical need due to an ongoing project.

Additionally, entities shall re-evaluate expenses related to current IT projects:

- Review existing IT maintenance and operations contracts to validate services, subscriptions, equipment, and /or software licenses are still in use and necessary. Any items not meeting that criteria shall be terminated.
- Review pending procurement/solicitations to determine if the effort can be paused or delayed.
- Reevaluate any IT projects in the Project Approval Lifecycle process to determine if the project can be paused or delayed.
- If necessary to continue efforts, consider whether costs can be spread over several years or if financing is a viable option.

Agency Secretaries and Cabinet-level Directors are authorized to make exemptions from these prohibitions only in the following limited instances:

- Addressing a declared emergency.
- Providing 24-hour medical care.
- Avoiding a significant revenue loss.
- Achieving significant net cost savings.

Lastly, Agency Secretaries and Cabinet-level Directors will be required to report monthly to **Finance and the Governor's Office on all approved exemptions as well as achieved** savings. Reporting instructions will be sent via a subsequent BL.

If you have any questions regarding this BL, please contact your assigned Program Budget Manager.

/s/ Joe Stephenshaw

JOE STEPHENSHAW

Director





## Memorandum

Date : APRIL 2, 2024

To : EXECUTIVE COMMITTEE  
**ARDASHES "ARDY" KASSAKHIAN, CHAIR**  
JACOB STEVENS, MEMBER

From : TIMOTHY M. CORCORAN

Subject : **DISCUSSION AND CONSIDERATION OF THE BOARD'S** STRATEGIC PLAN JULY 2024 – JUNE 2030

- a. Discussion and consideration of written public comments received **in response to the Board's Public Notice dated February 2024.**
- b. Additional public comments. (Gov. Code § 11125.7)
- c. Discussion and consideration of the draft Strategic Plan, which includes the following objectives:
  - (1) Improve outcomes for all motor vehicle consumers.
  - (2) Contribute to the advancement of the California State **Transportation Agency's Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity.**
  - (3) Transform our organization to become more resilient and conserve limited resources.
  - (4) Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders.
- d. Discussion and consideration of authorization of discretion to the Executive Director to implement action items responsive to the objectives noted above.

For the first time in its nearly 50 year history, the New Motor Vehicle Board (NMVB) is developing its own Strategic Plan. In developing the Strategic Plan for the Board's consideration, the team provided **feedback on the Board's strengths, weaknesses, threats, and opportunities.** Input was also provided by California State Transportation Agency (CalSTA) leadership and the NMVB Executive Committee.

The proposed Strategic Plan includes over 20 specific initiatives organized within the four objectives stated above, as detailed in the attached presentation and within the **Board's Public Notice** distributed to nearly 200 attorneys, manufacturers and distributors, dealers, associations and members of the public on February 27, 2024.

The initiatives being contemplated vary in their complexity, cost, and scope. Some initiatives are impractical in the near-term. For these reasons and others, the Strategic Plan is being presented to encompass a six-year period. This timeframe also aligns well with anticipated retirements in several key positions in the organization.

If the Board approves the Strategic Plan, the staff are requesting the Board grant the Executive Director discretion to take action responsive to the objectives outlined above. The Strategic Plan will be **reported to the Board in the Executive Director's Report** and as needed to the Executive Committee.

This matter is being agendaized for discussion and consideration at the April 25, 2024, General Meeting.

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

Attachment



# DRAFT Strategic Plan 2024-30

Presented to the New Motor Vehicle  
Board

April 25, 2024

# Background

- NMVB has never adopted a formal Strategic Plan.
- Governor's Executive Order N-16-22, among other things, directs agencies to develop or update their Strategic Plan.
- CalSTA's *Core Four* priorities are a call to action, applicable to each department under its oversight.
- Transformational changes are underway, shifting NMVB's model and creating new opportunities for program development.
- Many key positions will likely become vacant in the next six years.
- A Strategic Plan creates engagement opportunities across the organization.



# The development process

- Surveyed staff and conducted 1:1 sessions.
- Held several all-staff strategic plan development sessions.
- Held Executive Committee sessions to review progress and refine the draft.
- Consulted with CalSTA leadership for synergy with agency objectives.
- Developed and distributed the Executive Committee's public notice and solicitation for public input.



# Objectives presented by the Executive Committee

- 1 Improve outcomes for all motor vehicle consumers.
- 2 Contribute to the advancement of the *CalSTA Core Four: Safety, Equity, Climate Action and Economic Prosperity*.
- 3 Transform our organization to become more resilient and conserve limited resources.
- 4 Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders.



# Objective 1 - Potential Initiatives

- 1** Improve outcomes for all motor vehicle consumers.
  - a** We will enhance the consumer mediation program by raising awareness and better advocating for consumers, with an emphasis on historically disadvantaged and excluded communities.
    - Procure specialized mediation training for staff.
    - Identify and act upon allegations of discriminatory business practices.
    - Enhance our engagement with historically disadvantaged communities by connecting with local government and community-based organizations.
    - Form relationships with consumer protection associations/organizations.
    - Update and expand consumer resources, educational content, and vehicle safety information on our public website.
  - b** We will develop and implement a process for effective and appropriate application of existing petition authority to certain consumer complaints.
  - c** We will investigate the feasibility of a voluntary binding arbitration offering.
  - d** We will expand industry stakeholder services to include a forum for education that encourages voluntary compliance with consumer protection rules and regulations.





# Objective 2 - Potential Initiatives

- 2** Contribute to the advancement of the *CalSTA Core Four priorities: Safety, Equity, Climate Action and Economic Prosperity*.
- a** We will add *CalSTA Core Four* content to our public website.
  - b** We will enhance consumer education resources to provide information pertaining to safety recalls, ZEV owner resources, and topics related to new vehicle technology (e.g. education on virtues and limitations of advanced driver assistance systems). – Safety, Climate Action
  - c** We will support the industry’s effort to repair all remaining California-registered vehicles subject to the Takata air bag inflator recall. - Safety, Equity, Economic Prosperity
  - d** We will support the ZEV transition in California by encouraging the use of industry best practices in motor vehicle sales activities. – Climate Action, Economic Prosperity
  - e** We will seek to establish a NMVB Equity Officer role. – Equity
  - f** We will enhance the consumer mediation program to identify and act upon complaints alleging discriminatory sales practices. – Equity, Economic Prosperity
  - g** We will recognize local jurisdictions that demonstrate Zero-Emission Vehicle Readiness. – Climate Action, Equity, Economic Prosperity





# Objective 3 - Potential Initiatives

- 3** Transform our organization to become more resilient and conserve limited resources.
  - a** We will end our reliance on retired annuitant positions for permanent and ongoing workload.
  - b** We will improve our DMV licensee and vehicle distribution data collection processes.
  - c** We will migrate remaining paper processes to digital.
  - d** We will create and implement a NMVB Analyst Development Plan.
  - e** We will standardize written procedures across the organization.
  - f** We will develop a comprehensive onboarding and ongoing training plan, by specific task/function.



# Objective 4 - Potential Initiatives

- 4** Reimagine the engagement experience to meet the needs of the public, our industry, and litigant stakeholders.
  - a** We will modernize the mediation request form and webform portal.
  - b** We will improve the efficiency of document transmittals.
  - c** We will adopt a resilient credit/debit/eft payment option.
  - d** We will restore access to NMVB records in a user-friendly, efficient and compliant manner.





## Memorandum

**Date** : APRIL 10, 2024

**To** : ADMINISTRATION COMMITTEE  
BISMARCK OBANDO, CHAIR  
VACANT, MEMBER

**From** : TIMOTHY M. CORCORAN

**Subject** : DISCUSSION OF PLANS TO FILL THE VACANT ASSISTANT EXECUTIVE OFFICER POSITION, INCLUDING CONSIDERATION OF THE POSITION CLASSIFICATION, DUTIES, TITLE, AND RECRUITMENT STRATEGIES

The staff have been working with the Department of Motor Vehicles' Human Resources Branch to fill the vacant Assistant Executive Officer position. This position has been vacant since October 2023. As anticipated this has been a lengthy process.

Currently, there are two slightly different paths being explored to fill this position. First, is to make minimal updates to the current duty statement and to backfill the position at the current Staff Services Manager II (SSMII) classification as the "Assistant Executive Officer." Second, is to substantially expand the duties and fill as an "Administrative & Equity Officer", reclassified as a Career Executive Assignment (CEA), an Assistant Division Chief/Program Manager (ADC/PM), Staff Services Manager III (SSMIII), or other classification consistent with the expanded role. Government Code section 18547 defines a CEA as "an appointment to a high administrative and policy influencing position within the state civil service in which the incumbent's primary responsibility is the managing of a major function or the rendering of management advice to top-level administrative authority. Such a position can be established only in the top managerial levels of state service and is typified by broad responsibility for policy implementation and extensive participation in policy evolvment." The ADC/PM is a Department of Motor Vehicles (DMV) civil service classification often utilized by DMV for individuals serving as a second level manager of a major section or branch of the organization. DMV would need to grant approval to the NMVB for this classification to be utilized.

Vacant Assistant Executive Officer Position  
Page 2  
April 10, 2024

This matter is for information only at the April 25, 2024, General Meeting. No Board action is required.

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

Attachments

cc: Ardy Kassakhian, President

## Department of Motor Vehicles Proposed Position Duty Statement Form

<b>Division:</b> New Motor Vehicle Board	<b>Classification Title:</b> 4969 Staff Services Manager II (Managerial)
<b>Region/Branch:</b> New Motor Vehicle Board	<b>Working Title:</b> Assistant Executive Officer
<b>Unit:</b> New Motor Vehicle Board	<b>Tenure/Timebase:</b> Permanent
<b>Position City:</b> Sacramento	<b>Position County:</b> Sacramento
<b>Position Number:</b> 015-4969-001	<b>CBID/Bargaining Unit:</b> M01
<b>Conflict of Interest Classification:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (If Yes) This position is designated under the Conflict of Interest Code. This position is responsible for making or participating in the making of governmental decisions that may potentially have a material effect on personal financial interests. The appointee is required to complete Form 700 within 30 days of appointment. Failure to comply with the Conflict of Interest Code requirements may void the appointment.	
<b>Medical Evaluation:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Sensitive Position:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>DMV Employee Pull Notice:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Fingerprint/Live Scan:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>Professional License:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No
<b>Work Week Group</b> E	<b>Effective Date :</b> Pending
<b>Direction Statement and General Description of Duties:</b> The Assistant Executive Officer (AEO) is supervised by the Executive Director (ED) of the New Motor Vehicle Board (NMVB), "Board", and may also receive assignments directly from the Board, or from the Secretary or Undersecretary of the California State Transportation Agency (CalSTA). The incumbent is the NMVB's second-level administrative official and is responsible for the day-to-day supervision and oversight of its administrative and support staff as well as NMVB's service providers, and is required to consistently exercise a high degree of initiative, discretion, professionalism, and independence in this role. The incumbent, as an executive representative of a state board, is expected to always demonstrate integrity and ethical values.	

## Percentage and Essential/Marginal Functions:

### 70% Management of staff and service providers (E)

- Relies on their thorough understanding of civil service rules, State and departmental policies, as well as rules applicable to interagency agreements, contracts, and procurements to effectively recruit, retain, monitor, and evaluate a competent workforce that effectively supports the mission of the NMVB. Acts as an administrator for contracts, interagency agreements, and other processes associated with goods and service procurements for the NMVB, and in this capacity effectively assigns work appropriately and maintains effective oversight and accountability.
- Supports the members of the Board and its various standing and ad hoc committees by staffing committees, assigning and directing staff work, reporting to the Board in writing and at public meetings, and advising the Board on relevant statute, regulation and policy. Provides effective oversight of staff in the preparation and conduct of public meetings of the Board and its committees to assure those meetings are effective, professional, and in accordance with applicable rules including, but not limited to, those of the Bagley-Keene Open Meeting Act.
- In execution of broad administrative oversight duties, relies on their knowledge of applicable rules, policies, and practices applicable to the administrative functions of the NMVB, including budgeting, facility operations and support, purchasing and procurements, information and technology support, personnel, accounting, travel, and fiscal operations. Assures NMVB staff who are assigned tasks related to these functions are properly trained, and that their work is reviewed to the degree appropriate to assure documents and reports are accurate and suitable for presentation to the Board, CalSTA, Governor's Office, legislators, other governmental agencies, or the general public. Serves as liaison to the Department of Motor Vehicles' Administrative Services Division and participates in various meetings with their leadership and staff, assuring NMVB is effectively supported, administratively, and that NMVB is also an effective contributor to Department of Motor Vehicles goals, where appropriate. May also serve as liaison to other state, federal, or local agencies or organizations, as directed by the Executive Director.
- Oversees NMVB fee collections, as well as collection of fees on the behalf of The Department of Consumer Affairs (DCA) Arbitration

Certification Program (ACP). Reviews and approves billings, reports, and monitors these activities closely in adherence with applicable rules and policies. Consistently evaluates billing and collection activity, and independently institutes improvements.

- In collaboration with the Department of Motor Vehicles, maintains the NMVB public web site and virtual services, assuring they are professional in appearance, adhere to California government agency standards, are complaint and accessible, and are continually improved to best meet the needs of NMVB stakeholders.
- Acts as the principal administrator of NMVB's Consumer Mediation Program. Reviews and approves correspondence related to the program, prepared for a wide range of audiences. Continuously monitors and evaluates the effectiveness of the program and makes recommendations to the ED and the Board on program improvements. Develops, sources, and maintains robust training for staff involved in consumer mediation, and consistently monitors staff in their performance of this highly visible work.
- Develops and maintains uniform written procedures for NMVB staff, and assures staff are suitably cross trained in NMVB functions to support organizational resiliency.

#### 25% Executive Duties (E)

- Contributes to the development of NMVB policies, and supports the application of State, departmental, and Board policies as they apply to the NMVB. Represents the NMVB as an expert in NMVB operations in various forums, and demonstrates well developed skills in public policy, high level government administration, and executive leadership.
- As the NMVB AEO, participates in recurring meetings with the CalSTA Undersecretary and the Assistant and Deputy Directors of the various departments, boards and commissions under CalSTA's oversight. Actively and productively contributes to CalSTA's stated goals and objectives, as applicable to the NMVB.
- Supports the NMVB's continued work to embed considerations of diversity, equity, inclusion, and accessibility in the organization, and effectively, sensitively, and accurately communicates with internal and external parties regarding NMVB's work.
- In their capacity as an official for the NMVB, the AEO may be required to testify before the legislature on matters pertaining to NMVB's fiscal performance or appropriation.
- Effectively and routinely advises the ED of the status of NMVB projects and activities under the AEO's oversight, proactively

informs the ED of arising issues or challenges, and contributes to the formulation of solutions or mitigation strategies.

- Contributes to the development, iteration, and implementation of the organization's Strategic Plan, its objectives and key results goal-setting methodology, and its tactical actions. Appropriately delegates and provides oversight to staff who may support various initiatives of the Strategic Plan.
- In the planned or unplanned absence of the ED, the AEO may serve in an "Acting Executive Director" capacity, as and when directed by the Board, the CalSTA Secretary or Undersecretary, or the Executive Director.

5 % Performs other job-related duties and special assignments as required (M)

**Supervision Received:**

The AEO is supervised by the Executive Director

**Supervision Exercised and Staff Numbers:**

The AEO supervises; one Associate Governmental Program Analyst, one Staff Services Analyst/Associate Governmental Program Analyst, two Staff Services Analysts, and two Office Assistants. The AEO also oversees contractors and others providing services to the New Motor Vehicle Board via interagency agreement or alternative mechanisms.

**Working Conditions:**

Position may be eligible for telework. When in an office setting, works in a temperature-controlled office with artificial light. Operates a personal computer, telephone, and other standard office equipment. The position may require working under tight deadlines and irregular hours, including working weekends, and may require occasional travel to attend meetings and conferences.

**Physical Requirements:**

Position is primarily sedentary for extended periods of time. The position may require working under tight deadlines, irregular hours, occasional weekends, and may require several hours of reviewing documents in both electronic and hard copy. Requires use of a personal computer and other standard office equipment. Occasional reaching above shoulder level, occasional bending/stooping, and occasional lifting up to five (5) pounds. Ability to communicate effectively with internal/external customers, give presentations; and participate at meetings, conferences, and workshops. Occasional travel to other agencies to attend meetings and NMVB board meetings may be required.

**Special Requirements:**

Must pass background and live scan clearances before hire.

**Desirable Qualifications:**



- Knowledge of and experience in interpreting and applying related governmental laws and rules.
- Knowledge of and experience in State personnel management programs and services, including classification and pay and performance management.
- Ability to build and maintain cooperative working relationships with department management.
- Ability to adapt to changing priorities and deadlines.
- Ability to perform successfully independently and as a team member.
- Bilingual fluency (any)
- Experience at a state board or commission
- Managerial experience over a Division/Branch/Program/Large Geographical Area

**Personal Contacts:**

The incumbent is in close, frequent, and regular contact with members of the Board, California State Transportation Agency leadership and staff, various contacts at the Department of Motor Vehicles, leadership of the California Highway Patrol, the California Department of Transportation, the Office of Traffic Safety, the Board of Pilot Commissioners, the California Transportation Commission, and the High Speed Rail Authority. Interacts regularly with the Arbitration Certification Program Chief at the California Department of Consumer Affairs, and may interact with other government bodies as required. Interactions may be confidential, informative, or sensitive in nature.

**Department of Motor Vehicles  
Proposed Position Duty Statement Form**

<b>Division:</b> New Motor Vehicle Board	<b>Classification Title:</b> To Be Determined
<b>Region/Branch:</b> N/A	<b>Working Title:</b> Administrative & Equity Officer
<b>Unit:</b> New Motor Vehicle Board	<b>Tenure/Timebase:</b> Non-Tenured
<b>Position City:</b> Sacramento	<b>Position County:</b> Sacramento
<b>Position Number:</b> 525-015-7500-XXX	<b>CBID/Bargaining Unit:</b> M01
<b>Conflict of Interest Classification:</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> (If Yes) This position is designated under the Conflict of Interest Code. This position is responsible for making or participating in the making of governmental decisions that may potentially have a material effect on personal financial interests. The appointee is required to complete Form 700 within 30 days of appointment. Failure to comply with the Conflict of Interest Code requirements may void the appointment.	
<b>Medical Evaluation:</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Sensitive Position:</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <b>DMV Employee Pull Notice:</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Fingerprint/Live Scan:</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Professional License:</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	
<b>Work Week Group</b> E	<b>Effective Date :</b> Pending
<b>Direction Statement and General Description of Duties:</b> Under the general direction of the Executive Director (ED) of the New Motor Vehicle Board (NMVB), "Board", the Administrative & Equity Officer (AEO) acts as NMVB's chief administrative official and is responsible for the day-to-day administration of the NMVB and the supervision and oversight of its staff and service providers. The AEO serves as the NMVB Equity Officer, and is expected to apply best practices to the Board's work and its communications and engagement with the public and with various governmental, public, and industry stakeholders. This position may also receive assignments directly from the Board, or from the Secretary or Undersecretary of the California State Transportation Agency (CalSTA).	
<b>Percentage and Essential/Marginal Functions:</b>  40% <u>Policy-Development and Executive Duties (E)</u> Develops, evaluates, recommends, and implements policies related to the NMVB, and supports the application of State, departmental, and Board policies as they apply to the NMVB. Provides leadership and direction over the NMVB operations, and identifies and initiates changes to NMVB policies or procedures that will assist the Board with its goals and objectives. Effectively and routinely advises the ED of the status of NMVB projects and activities,	

arising issues or challenges, formulates and implements solutions or mitigation strategies.

Participates in recurring meetings with the CalSTA Undersecretary and the Assistant and Deputy Directors of the various departments, boards and commissions under CalSTA's oversight. Actively contributes to CalSTA's stated goals and objectives, as applicable to the NMVB.

**25% Board Administration (E)**

Recruits, retains, monitors, and evaluates NMVB staff that effectively supports the mission of the NMVB. Acts as NMVB's chief administrator for contracts, interagency agreements, and other processes associated with goods and service procurements for the NMVB, delegates work appropriately, and maintains effective oversight and accountability.

Supports the members of the Board and its various standing and ad hoc committees by staffing committees, assigning and directing staff work, reporting to the Board in writing and at public meetings, and advising the Board on relevant statute, regulation and policy. Provides effective oversight of staff in the preparation and conduct of public meetings of the Board and its committees to assure meetings are effective, professional, and in accordance with applicable laws and rules including, but not limited to, the Bagley-Keene Open Meeting Act.

Executes broad administrative oversight duties, including budgeting, facility operations and support, purchasing and procurement, information and technology support, personnel, accounting, and fiscal operations. Assigns, trains, and reviews Administrative Services Division (ASD) staffs' work. Serves as liaison to the Department of Motor Vehicles' (DMV) Administrative Services Division and participates in various meetings with DMV leadership and staff, assuring NMVB is effectively supported, administratively, and that NMVB is also an effective contributor to DMV goals, where appropriate. May also serve as liaison to other state, federal, or local agencies or organizations, as directed by the ED.

In collaboration with DMV, maintains the NMVB public website, assuring it adheres to California government agency standards, is complaint and accessible, and is continually improved to best meet the needs of NMVB stakeholders.

Oversees NMVB fee collections, as well as collection of fees on the behalf of the Department of Consumer Affairs (DCA) Arbitration Certification Program (ACP). Reviews and approves billings and reports, and monitors these activities

closely in adherence with applicable rules and policies. Consistently evaluates billing and collection activity, and independently institutes improvements.

Acts as the principal administrator of NMVB's Consumer Mediation Program. Reviews and approves correspondence related to the program, prepared for a wide range of audiences. Continuously monitors and evaluates the effectiveness of the program and makes recommendations to the ED and the Board on program improvements. Develops, sources, and maintains robust training for staff involved in consumer mediation, and consistently monitors staff performance.

**25% Diversity, Equity, Inclusion & Accessibility (E)**

As the NMVB Equity Officer, the AEO serves as the chief policy advisor to the Board's Ad Hoc Committee on Equity, Justice and Inclusion (EJI), on all matters pertinent to diversity, equity and inclusion (DEIA), as applicable to the NMVB and its various stakeholders. In this capacity, the incumbent will rely on their continuously developing knowledge and understanding of effective DEIA principles and strategies to mold NMVB policy and program development. Effectively and professionally participates in various forums and collaborations on DEIA-related efforts, and communicates with sensitivity and respect in all instances.

**5% Acting Executive Director (E)**

In their capacity as the chief administrative official for the NMVB, the AEO may be required to testify before the legislature on matters pertaining to NMVB's fiscal performance or appropriation. The AEO serves in an "Acting Executive Director" capacity in the planned or unplanned absence of the ED, and when directed by the ED, Board, CalSTA Secretary or Undersecretary.

**5 % Miscellaneous (M)**

Performs other job-related duties and special assignments as required.

**Supervision Received:**

The AEO is supervised by the ED.

**Supervision Exercised and Staff Numbers:**

The AEO supervises two Staff Services Analysts/Associate Governmental Program Analysts, two Staff Services Analysts, and two Office Assistants. The AEO also oversees contractors and others providing services to the NMVB via interagency agreement or alternative mechanisms.

**Working Conditions:**

Position may be eligible for telework. When in an office setting, works in a temperature-controlled office with artificial light. Operates a personal computer, telephone, and other standard office equipment. The position may

require working under tight deadlines and irregular hours, including working weekends, and may require occasional travel to attend meetings and conferences.

**Physical Requirements:**

Position is primarily sedentary for extended periods of time. The position may require working under tight deadlines, irregular hours, occasional weekends, and may require several hours of reviewing documents in both electronic and hard copy. Requires use of a personal computer and other standard office equipment. Occasional reaching above shoulder level, occasional bending/stooping, and occasional lifting up to five (5) pounds. Ability to communicate effectively with internal/external customers, give presentations; and participate at meetings, conferences, and workshops. Occasional travel to other agencies to attend meetings and NMVB board meetings may be required.

**Special Requirements:**

Must pass background and live scan clearances before hire.

**Desirable Qualifications:**

- Excellent communication, writing, interpersonal, research and analytical skills are essential.
- Knowledge of and experience in interpreting and applying related governmental laws and rules.
- Knowledge of and experience in State personnel management programs and services, including classification and pay and performance management.
- Ability to exercise a high degree of initiative, discretion, professionalism and independence.
- Ability to build and maintain cooperative working relationships with department management.
- Ability to adapt to changing priorities and deadlines.
- Ability to perform successfully independently and as a team member.
- Ability to develop clear and fair departmental policies, think creatively and innovatively, and maintain confidentiality.
- Training/certifications/experience specific to diversity, equity, inclusion and accessibility.
- Bilingual fluency (any)
- Experience at a state board or commission
- Experience at the 2<sup>nd</sup> organization Level over a Branch/Program/Large Geographical Area.

**Personal Contacts:**

The incumbent is in close, frequent, and regular contact with members of the Board, CalSTA leadership and staff, various contacts at the DMV, leadership of the California Highway Patrol, the California Department of Transportation, the Office of Traffic Safety, the Board of Pilot Commissioners, the California Transportation Commission, and the High-Speed Rail Authority. Interacts



## Memorandum

Date : **APRIL 2, 2024**

To : **ADMINISTRATION COMMITTEE  
BISMARCK OBANDO, CHAIR  
VACANT, 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 28, 2023, General Meeting. Each year it is thoroughly reviewed and updated. The 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 2024" was updated to reflect recent legislative changes that added three new protests in Vehicle Code section 3065.3(b)-(d), the published opinion in *Barber Group, Inc. v. New Motor Vehicle Bd.* (2023) 93 Cal.App.5th 1025, and new Regulation 551.26 pertaining to representation in protests.

There are several grammatical and consistency changes that are highlighted yellow in underline and strikeout font. Additional edits are summarized below:

- In the preamble, footnote 1 was added to page ii to provide more detail on the Board's regulations and specify which articles pertain to petitions and protests.
- The charts on pages 6-7, 8-9, and 12 were updated to reflect the three new protests added to Vehicle Code section 3065.3.
- The language pertaining to waiver of the \$200 filing fee was clarified on pages 10 and 75. The reference to financial hardship was deleted as the Executive Director may grant the fee waiver upon a showing of good cause. For consistency, this change was also made in the *Export or Sale-for-Resale Prohibition Policy Protest Guide*.
- Footnote 6 on page 10 adds language pertaining to the temporary discretion granted to the Executive Director at the April 28, 2023, General Meeting to assign additional merits hearings to the Office of Administrative Hearings (OAH) outside the current assignment log.
- Assembly Bill 473 added three new protests in Vehicle Code section 3065.3. These

changes are reflected on pages 61-67.

- The revised procedure for assigning merits hearing ALJs adopted by the Board at its September 21, 2023, General Meeting was detailed in footnote 26 on page 69. 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. In the event a Board ALJ is not available, 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.
- 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. This language has been added to footnote 27 on page 70.
- The Board adopted Transcript Policy was amended at the September 21, 2023, General Meeting. The parties now are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts for the Board and OAH beginning on the first hearing day for all merits hearings and dispositive motions. This amendment is reflected on pages 72-73.
- Gender specific language was replaced with gender neutral language in the sample forms in the Appendix.

This matter is being agendaized for discussion and consideration at the April 25, 2024, General Meeting.

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



*State of California*

***NEW MOTOR VEHICLE BOARD***

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

April 2024



# STATE OF CALIFORNIA

## NEW MOTOR VEHICLE BOARD

2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818  
Phone: (916) 445-1888  
Email: [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov)  
Website: <http://www.nmvb.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  
KARTHICK RAMAKRISHNAN  
JACOB STEVENS

#### Dealer Members

ANNE SMITH BOLAND  
ASHLEY DENA  
BRADY SCHMIDT

### EXECUTIVE STAFF

TIMOTHY M. CORCORAN  
Executive Director

### LEGAL STAFF

ROBIN P. PARKER  
Chief Counsel  
JASON A. ROSE  
Senior Staff 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 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818

Correspondence can also be sent via email at [nmvb@nmvb.ca.gov](mailto:nmvb@nmvb.ca.gov). The telephone number of the Board is (916) 445-1888 and the website address is [www.nmvb.ca.gov](http://www.nmvb.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").<sup>1</sup> 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](http://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](http://www.nmvb.ca.gov).

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<sup>1</sup> 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 appeals<sup>1</sup> from final decisions of the Director of the Department adverse to the occupational license of a new motor vehicle dealer, manufacturer, distributor, or representative.<sup>2</sup> 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.

<b>Who</b>	<b>Qualifications</b>	<b>Appointment</b>
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.

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

<sup>2</sup> 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.4<sup>th</sup> 51; *Mathew Zaheri Corp. v. Mitsubishi Motor Sales of America, Inc.* (1993) 17 Cal.App.4<sup>th</sup> 288.) However, subsequent court decisions have held otherwise (*Miller v. Superior Court* (1996) 50 Cal.App.4<sup>th</sup> 1665; *Hardin Oldsmobile v. New Motor Vehicle Board* (1997) 52 Cal.App.4<sup>th</sup> 585; *Tovas v. American Honda Motor Company, Inc.* (1997) 57 Cal.App.4<sup>th</sup> 506; *Kemp v. Nissan Motor Corporation in U.S.A.* (1997) 57 Cal.App.4<sup>th</sup> 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.4<sup>th</sup> 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 2024**

### **Legislation**

The California New Car Dealers Association sponsored legislation that added three new protests in subdivisions (b)-(d) of Vehicle Code section 3065.3, as follows:

(a) No 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.

(b) No franchisor shall allocate vehicles or parts in a manner inconsistent with the standards set forth in subdivision (a) of Section 11713.3.

(c) No 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.

(d) No franchisor shall compete with a dealer in violation of subdivision (o) of Section 11713.3.

(e) A franchisee may file a protest with the board for determination of whether a franchisor has complied with this section and in that proceeding the franchisor shall have the burden of proof.

(Amended by Stats. 2023, Ch. 332, Sec. 2. (AB 473) Effective January 1, 2024.)

These new protests are applicable to Article 4 protests that involve vehicles other than RVs such as cars, motorcycles, ATVs, heavy-duty trucks, and buses.

Subdivision (o) of Vehicle Code section 11713.3 was also amended effective January 1, 2024. Prior to the amendments, manufacturers and distributors were precluded from competing “with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.” Now, it is unlawful and a violation of the code for a manufacturer or distributor to “compete with their franchisees in the sale, lease, or warranty service of new motor vehicles.” References to “same line-make” and “relevant market area” were removed.

The text of Assembly Bill 473 is available at: <https://leginfo.legislature.ca.gov/faces/home.xhtml>.

## **Case Law**

In July 2023, the Third District Court of Appeal issued an opinion for partial publication in *Barber Group, Inc. v. New Motor Vehicle Bd.* (2023) 93 Cal.App.5th 1025. The court held that the Board properly determined that the burden of proof in an establishment protest in Vehicle Code section 3062 did not switch to the franchisor to prove the reasonableness of the performance standards. Subdivision (g)(2) of Section 11713.13 provides that in “any proceeding in which the reasonableness of a performance standard . . . is an issue, the manufacturer . . . shall have the burden of proof.” Vehicle Code section 3066(b) provides that “[t]he franchisee shall have the burden of proof to establish that there is good cause not to enter into a franchise establishing an additional motor vehicle dealership . . . .” The court reasoned that the competing statutes were irreconcilable, and that to adopt the protesting dealer’s construction would entail a rewriting of the statute. The court found that this would be improper because it would be contrary to the legislative intent to place the burden solely on the franchisee in an establishment protest.

## **Regulations**

The Board’s practice has been to require out-of-state attorneys to submit an application to appear *pro hac vice* identifying the associated California counsel. However, effective July 1, 2023, this is no longer necessary in light of the following new regulation:

13 CCR § 551.26. Representation in Protests or Petitions.

Any party shall have the right to appear at any hearing by representing itself, by counsel, or by other representative.

Note: Authority cited: Section 3050, Vehicle Code. Reference: Section 3050, Vehicle Code.

## **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:

<b>Type of Case</b>	<b>Vehicle Code Authority</b>	<b>Page Nos.</b>
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. (Note: 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. (Note: 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 <u>compliance with subdivision (g) of Section 11713.13: a franchisor's performance standard, sales objective, or program for measuring a dealer's sales, service, or customer service performance.</u> (Note: there are no comparable provisions for RV dealers.)	3065.3(a)	61-65
<u>Disputes relating to a franchisor's allocation of vehicles or parts.</u> (Note: there are no comparable provisions for RV dealers.)	3065.3(b)	61-65
<u>Disputes relating to a franchisor's imposition of a facility or equipment policy.</u> (Note: there are no comparable provisions for RV dealers.)	3065.3(c)	61-65
<u>Disputes relating to a franchisor competing with a dealer.</u> (Note: there are no comparable provisions for	3065.3(d)	66-67

Type of Case	Vehicle Code Authority	Page Nos.
<b>RV dealers.)</b>		
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 <sup>3</sup> or disputes between a franchisor and a franchisee seeking an investigation or a licensing action by the Department.	3050(b)	74-79

**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.

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<sup>3</sup> 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:

<b>Vehicle Code Section</b>	<b>Provision</b>
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 <b>whether</b> a franchisor's performance standard, sales objective or program for measuring a dealer's sales, service, or customer service performance <b>is inconsistent with the standards set forth in</b> . <del>Disputes relating to whether a franchisor complied with</del> subdivision (g) of Section 11713.13. ( <u>Note</u> : there are no comparable provisions for RV dealers.)
<b>3065.3(b)</b>	<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. (Note: there are no comparable provisions for RV dealers.)</b>
<b>3065.3(c)</b>	<b>Disputes relating to whether a franchisor's imposition of a</b>



Vehicle Code Section	Provision
	facility or equipment policy is inconsistent with the standards set forth in subdivision (a), (b), (c), or (k) of Section 11713.13. (Note: 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. (Note: there are no comparable provisions for RV dealers.)

### **Separate Protests**

A separate protest is required if there is more than one franchise.<sup>4</sup> 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 would require 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,<sup>5</sup> 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](mailto:nmvp@nmvp.ca.gov) or mailed sent by certified or registered mail to 2415 1<sup>st</sup> Avenue, MS L242, Sacramento, CA 95818.

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<sup>4</sup> 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.”

<sup>5</sup> 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 [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.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, 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 [nmvb.@nmvb.ca.gov](mailto:nmvb.@nmvb.ca.gov). **In the event of a financial hardship, E**ither the protestant or respondent may submit a request for a fee waiver, **requesting that t**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.<sup>6</sup> A peremptory challenge of the assigned administrative law judge is not

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<sup>6</sup> 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.**

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.

**Amicus Curiae Briefs**

The Board, its Executive Director, or an ALJ may, in his or her 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.

<b>Protest Section of Guide</b>	<b>Page Nos.</b>
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
<del>Franchisor Compliance with Section 11713.13(g)</del> <u>Performance Standards</u>	61-65
<u>Allocation of Vehicles or Parts</u>	61-65
<u>Facility or Equipment Policy</u>	61-65
<u>Franchisor Competing with a Dealer</u>	66-67
Hearing Procedures	68-73

## 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.

<b>Reason for Termination</b>	<b>Filing Period</b>	<b>Effective Date of Termination</b>
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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>7</sup>	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, money order or authorize a 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

<sup>7</sup> 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:

<b>Circumstances</b>	<b>Vehicle Code Section</b>
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.<sup>8</sup>

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:

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<sup>8</sup> 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).

<b>Reason for Modification</b>	<b>Filing Period</b>	<b>Effective Date of Modification</b>
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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>9</sup>	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, money order or authorize a 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:

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<sup>9</sup> See footnote 7.

<b>Circumstances</b>	<b>Vehicle Code Section</b>
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)<sup>10</sup> 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

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<sup>10</sup> 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, Impala, 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.<sup>11</sup> (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.

<b>Type of Notice</b>	<b>Filing Period</b>	<b>Effective Date of Relocation/ Establishment</b>
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.

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<sup>11</sup> 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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>12</sup>	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, money order or authorize a 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

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<sup>12</sup> 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:

<b>Circumstances</b>	<b>Vehicle Code Section</b>
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.

<b>Type of Notice</b>	<b>Filing Period</b>	<b>Effective Date of Relocation/ Establishment</b>
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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>13</sup>	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, money order or authorize a 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.

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<sup>13</sup> 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:

<b>Circumstances</b>	<b>Vehicle Code Section</b>
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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>14</sup>	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, money order or authorize a 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 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)).

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<sup>14</sup> 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 30<sup>th</sup> 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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>15</sup>	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, money order or authorize a 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

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<sup>15</sup> See footnote 7.

**WARRANTY CLAIMS PROTESTS**  
**Motor Vehicle Dealers**

<b>Vehicle Code Section</b>	<b>Type of Protest</b>	<b>Notice to Dealer</b>	<b>Time to File Protest</b>	<b>Burden of Proof if there is a Hearing</b>
3065(a)	<b>Pre-Repair</b> 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)	<b>Post-Repair</b> 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)	<b>Post-Repair/Post-Appeal</b> 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)	<b>Post-Audit</b> 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)	<b>Post-Audit/Post-Appeal</b> 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.<sup>16</sup>
- 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:<sup>17</sup>

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

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<sup>16</sup> 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))

<sup>17</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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 30<sup>th</sup> 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.<sup>18</sup> A protest involving retail labor rate or retail parts rate must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>19</sup>	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, money order or authorize a 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**

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

<sup>18</sup> Effective January 1, 2022, Section 586 was amended to incorporate Section 3065.4 protests.

<sup>19</sup> See footnote 7.

within 30 days after receipt of the request. The request for the calculation will also be deemed a 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**

<b>Vehicle Code Section</b>	<b>Type of Protest</b>	<b>Notice</b>	<b>Time to File Protest</b>	<b>Burden of Proof if there is a Hearing</b>
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 30<sup>th</sup> 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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>20</sup>	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, money order or authorize a 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

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<sup>20</sup> 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 30<sup>th</sup> 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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>21</sup>	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, money order or authorize a 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

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<sup>21</sup> See footnote 7.

**FRANCHISOR INCENTIVE PROGRAM PROTESTS**  
**Motor Vehicle Dealers**

<b>Vehicle Code Section</b>	<b>Type of Protest</b>	<b>Notice to Dealer</b>	<b>Time to File Protest</b>	<b>Burden of Proof if there is a Hearing</b>
3065.1(a)	<b>Initial Disapproval</b> 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)	<b>Final Denial/ Post-Appeal</b> 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)	<b>Post-Audit</b> 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)	<b>Post-Audit/Post-Appeal/Final Denial</b> 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 30<sup>th</sup> 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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>22</sup>	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, money order or authorize a 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)).

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<sup>22</sup> See footnote 7.

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

**PERFORMANCE STANDARDS, SALES OBJECTIVES, OR PROGRAMS  
FOR MEASURING A DEALER'S SALES, SERVICE, OR CUSTOMER  
SERVICE PERFORMANCE - 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))**

**Statutory Authority**

Vehicle Code section 3065.3 created a new protest pertaining to alleged violations of subdivision (g) of Section 11713.13.

**Franchisor's Performance Standard, Sales Objective or Program**

Subdivision (a) of 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."<sup>23</sup>

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<sup>23</sup> 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.

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:

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(2) In any proceeding in which the reasonableness of a performance standard, sales objective, or program for measuring dealership sales, service, or customer service performance is an issue, the manufacturer, manufacturer branch, distributor, distributor branch, or affiliate shall have the burden of proof.

...

(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 ~~pertaining to a franchisor's performance standard~~. 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 **involving a challenge of a franchisor's performance standard** must contain all of the following (see Appendix for sample Form A):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>24</sup>	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, money order or authorize a 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

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<sup>24</sup> See footnote 7.



## **Determination of Protest**

If there is a hearing, the franchisor has the burden of proof **as follows:** that its performance standard, sales objective or program is not inconsistent with the standards set forth in subdivision (g) of Section 11713.13 (Veh. Code § 3065.3(eb)).

<b><u>Vehicle Code</u></b>	<b><u>Type of Protest</u></b>	<b><u>Burden of Proof</u></b>
<b><u>3065.3(a)</u></b>	<b><u>Performance Standard</u></b>	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.
<b><u>3065.3(b)</u></b>	<b><u>Allocation of Vehicles or Parts</u></b>	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.
<b><u>3065.3(c)</u></b>	<b><u>Imposition of Facility or Equipment Policy</u></b>	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):

<b>Content Requirements</b>	<b>Regulatory Authority</b>
Must be in writing and be signed by a franchisee or its attorney. <sup>25</sup>	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, money order or authorize a 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)).

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<sup>25</sup> 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 Board<sup>26</sup> 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:

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<sup>26</sup> 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. <sup>27</sup>
2	<p data-bbox="289 310 1403 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 1403 1073" style="list-style-type: none"> <li data-bbox="329 457 1403 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> <li data-bbox="329 604 1403 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> <li data-bbox="329 751 1403 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> <li data-bbox="329 940 1403 1073">• 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)</li> </ul>
3	The Board or an ALJ designated by the Board presides over merits hearings on protests. <sup>28</sup>

**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

<sup>27</sup> 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.

<sup>28</sup> See footnote 26.

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

The Board arranges for a court reporter for all Board meetings, all hearings on the merits of a protest or a petition, and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter.

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 and Transcript, Delivery Fees, Per Diem Costs, Realtime Set-Up Fees, Expedite Rates, Cancellation Fees and any other Costs	Transcript Fees for the Board and Office of Administrative Hearings (if applicable)
Hearings on the merits and dispositive motions <sup>29</sup> – First Day	Board (excluding Realtime set-up fees) Participating parties	Board (requesting party or parties may order and pay for copies of official transcripts) Participating parties
Hearings on the merits and dispositive motions – After First Day	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

As indicated above, for the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding the Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fee, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.

<sup>29</sup> "Dispositive motions" are those that result in a final determination of the protest or petition before the Board.



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. ~~Counsel can utilize the Board's contracted reporting service but are not required to do so.~~ 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~~ are responsible for purchasing their own transcript(s), if desired.

## **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.4<sup>th</sup> 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, money order or authorized credit card charge payable to the New Motor Vehicle Board, must accompany the petition and answer. **In the event of a financial hardship,** ~~Either~~ the protestant or respondent may submit a request for a fee waiver, ~~requesting that t~~**he** 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).

<b>Content Requirements</b>	<b>Regulatory Authority</b>
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, money order or authorize a 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 agendaized 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 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))**



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](http://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 **it**self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and email address, if available]

4 \_\_\_\_\_ Attorney for [Petitioner] or in pro per [if party representing **it**self]

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.	)	<b>PETITION</b>
		)	[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 other 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: \_\_\_\_\_

**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](http://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 **it**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 **it**self]

2 \_\_\_\_\_ [address]

3 \_\_\_\_\_ [telephone number, fax number and email address, if available]

4 \_\_\_\_\_ Attorney for [Petitioner] or in pro per [if party representing **it**self]

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.	)	<b>PETITION</b>
		)	[Vehicle Code section 3050(b)(1)]
15	NAME OF LICENSEE,	)	[Vehicle Code section 3050(b)(3)]
		)	
16	Respondent.	)	
		)	

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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:

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Petition (Veh. Code § 3050(b)(1) or (3))



## Memorandum

Date : APRIL 2, 2024

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 agendizing 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 April 25, 2024 General Meeting follows:

- Undersecretary Mark Tollefson, California State Transportation Agency (CalSTA) will be introduced to the Board and make a presentation on CalSTA.
- Board Member education concerning Statement of Incompatible Activities (Gov. Code §§ 19572, 19990; Fisher v. State Personnel Bd. (2018) 25 Cal. App. 5th 1), examples of activities that are incompatible, conflicts of interest (Gov. Code § 87100, et seq.), and ethics and disclosure rules by John T. McGlothlin, Deputy Attorney General assigned to the Board - Board Development Committee.

Educational presentations will be agendized 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 on implementation of alternative fuel vehicles in mass transit.
- Topics on Board procedure, including:
  - Writs of Administrative Mandate.
  - Stipulated Decisions and Orders.



## Update on Board Development Activities

Page 2

April 2, 2024

- Dealer Member Participation.
- Foundational Board published cases and their common application.
- Petitions.
- Case management procedures:
  - 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 April 25, 2024, General Meeting. No Board action is required.

cc: Ardy Kassakhian, President



## Memorandum

Date : **APRIL 2, 2024**

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, 2024. 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 section<sup>1</sup> 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

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<sup>1</sup> All statutory references are to the Government Code.

Government Code sections 11507.3, 11507.6, 11507.7, 11511, 11511.5, 11513, 11514, 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, 2024. The only substantive change to the summary is an update to the sample "Order of Time and Place of Hearing" to reflect the Board's revised Transcript Policy. (Summary, p. 11) There were several non-substantive changes to the Board's regulations making gender-specific language gender-neutral. (Summary, pp. 4, 10, 11-12, and 16-17)

### **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)

The changes to the Bagley-Keene Open Meeting Act in the attached summary are:

- Subdivision (c) was added to Government Code section 11124 effective January 1, 2024. This section precludes as a condition of attendance that a person register their name, provide other information, complete a questionnaire, or fulfill any condition precedent to their attendance. Subdivision (c) provides that this section does not apply to an internet website or other online platform that may require the submission of information to log into the teleconferenced meeting if that person is permitted to use a pseudonym or other anonymous information. (Summary, p. 4)

- Effective July 1, 2022 through July 1, 2023, and extended until December 31, 2023, Section 11133 authorized the Board to hold meetings through teleconference. This section was repealed effective December 31, 2023, so footnote 4 on page 7 was deleted.
- Effective January 1, 2024, through January 1, 2026, Senate Bill 544 (Senator Laird; Ch. 216, Stats. 2023) added an additional authorization to hold open or closed teleconference meetings in Government Code section 11123.2. This would be a hybrid meeting with some members physically present at the meeting while other members attend and participate from a teleconference location or a remote location. Although some of the requirements are similar to those previously authorized by Executive Order and legislation, a number of additional requirements make application to the Board's meetings impracticable due to cost, restrictions on IT equipment purchases in Budget Letter 23-27, and lack of evidence that offering virtual participation would meaningfully increase attendance. (Summary, pp. 8-10)
- Effective January 1, 2024, through January 1, 2026, Senate Bill 544 amended Section 11123.5, which pertains to teleconference meetings of advisory committees. It now references new Section 11123.2. Additional changes require one staff member present at the physical meeting location. Language excluding members participating remotely from counting towards the quorum and requiring decisions be by rollcall vote were deleted. New subdivision (h) requires Board members visibly appear on camera during the open portion of a meeting. (Gov. Code § 11123.5(h)(1)) If a member does not appear on camera due to internet connectivity, the member is required to announce the reason for their nonappearance when their camera is turned off. (Gov. Code § 11123.5(h)(3)) (Summary, pp. 10-11)

In October 2023, the California Department of Justice updated its *Bagley-Keene Open Meeting Act Guide*. The updated Guide includes citations to relevant case law and formal Attorney General opinions, and is available at <https://oag.ca.gov/system/files/media/bk-open-meeting-act-guide-2023.pdf>. The Guide does not incorporate the new provisions pertaining to teleconference meetings but an update is anticipated in 2024.

This matter is being agendized for information only at the April 25, 2024, General Meeting.

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



## Memorandum

Date : **March 29, 2024**

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, 2024<sup>1</sup> and recent legal opinions:

### **The Political Reform Act**

The Political Reform Act (“PRA”), Government Code<sup>2</sup> 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.

For 2024, the following relevant changes were made:

1. Effective January 1, 2024, Senate Bill 681 (Senator Allen, Ch. 499, Stats. 2023) added Section 81012.5 to provide an option for the public to sign up to receive email alerts any time a bill to amend the Act is introduced, amended, or otherwise subject to an action triggering a specified notification. The email alerts must be sent in the shortest feasible time, but no later than 9 a.m. the calendar day after the legislative action that is the subject of the alert.

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<sup>1</sup> 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.

<sup>2</sup> All statutory references are to the Government Code.

2. Effective October 10, 2023, Senate Bill 29 (Senator Glazer; Ch. 696, Stats. 2023) added Section 83116.7 to establish a political reform education program as an alternative to an administrative proceeding for a person who commits minor violations of the Act. A person is eligible for the program if they have little or no experience with the Act and where the violation resulted in minimal or no public harm. If a person meets the requirements to participate in the political reform education program and completes the program, this will exempt the person from administrative, civil, or criminal penalties for the applicable violation of the Act.
3. Effective October 10, 2023, Senate Bill 29 amended Section 91013 to prohibit a filing officer from imposing the \$10 per day liability if the person who filed the late report or statement was unable to timely file due to serious illness or hospitalization or if the person completes the political reform education program.

In addition, relevant case law has also recently held the following:

The Supreme Court of California resolved a conflict among the lower courts concerning the award of attorney's fees to a prevailing party under Section 91003(a). Under this Section, a trial court may award attorney fees to a plaintiff or defendant who prevails. In order to promote the purpose of encouraging private litigation to enforce the Act, it imposed an asymmetrical system that allows an award of attorney fees, in its discretion, to a prevailing defendant only if the plaintiff's claims were frivolous, unreasonable, or without foundation. (*Travis v. Brand* (2023) 14 Cal.5th 411.)

### **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, 2024, Senate Bill 790 (Senator Padilla, Ch. 77, Stats. 2023) added Section 7928.801, which provides that any executed contract for the purchase of goods or services by a state or local agency, including price and terms of payment, is a public record subject to disclosure. Any provision in a contract that excludes such a contract from disclosure or agreeing to consider it confidential or proprietary is void and unenforceable as a matter of law.

In addition, relevant case law has also recently held the following:

1. The CPRA does not impose a duty upon public agencies to preserve potentially responsive records that otherwise would be subject to an automatic destruction policy. The CPRA is not a records retention statute. The CPRA does not have any provisions pertaining to record retention. The CPRA is also silent with respect to any obligation on the part of a public agency to keep any particular records or to preserve records after a public records request has been made. The PRA's sole function is to provide for disclosure. (*City of Gilroy v. Superior Court* (2023) 96 Cal.App.5th 818.)
2. Courts will broadly construe the CPRA in favor of disclosure and narrowly construe the applicability of any exceptions. An Internal Affairs investigative report related to peace officer misconduct was improperly redacted. The City of Oakland had relied on Penal Code section 832.7 to justify its redactions, the Court emphasized "the [CPRA] must be broadly construed" to "further the people's right of access." (*BondGraham v. Superior Court* (2023) 95 Cal.App.5th 1006.)
3. A party may not use CPRA litigation to obtain – through the Civil Discovery Act – the very records at issue in the litigation. Nor may a party use the CPRA litigation to obtain information from a public agency that it would not otherwise be entitled to under the CPRA. (*County of San Benito v. Superior Court* (2023) 96 Cal.App.5th 243.)

If you have any questions or comments, please contact me or Jason at (916) 445-1888. This matter is being agendized for information only at the April 25, 2024, General Meeting.

cc: Ardy Kassakhian, President



# Memorandum

Date : April 4, 2024

To : FISCAL COMMITTEE  
 BISMARCK OBANDO, CHAIR  
 ASHLEY DENA, MEMBER

From : SUZANNE LUKE  
 TIMOTHY CORCORAN

Subject : REPORT ON THE BOARD’S FINANCIAL CONDITION FOR THE 1<sup>ST</sup> QUARTER OF FISCAL YEAR 2023-2024

The following is a financial summary of the Board’s expenditures and revenue through the 1<sup>st</sup> quarter of Fiscal Year (FY) 2023-2024.

### Expenditures Fiscal Year 2023-24

Annual Appropriation	Quarter 1 Expenditures	Quarter 2 Expenditures	Quarter 3 Expenditures	Quarter 4 Expenditures	Appropriation Remaining	Appropriation Remaining %
\$2,073,000	\$344,927	TBD	TBD	TBD	\$1,728,073	83%

### Revenue Fiscal Year 2023-24

Beginning Reserve Balance	Revenue Fiscal Year-to-Date	Total Resource Balance	Total Revenue in Prior Fiscal Year
*\$2,900,147	\$890,550	\$3,790,697	\$1,659,011

Current Reserve Balance – \$3,445,770 balance after 1<sup>st</sup> Quarter Expenditures. The Board expended 17% of its appropriated budget as of the 1<sup>st</sup> quarter.

For further information, I’ve attached revenue and expenditure details as well as the Board’s fund condition breakdown.

Given the current reserve balance, staff does not see a need for an adjustment to the Board’s fee structure at this time. Staff will continue to closely monitor new vehicle sales along with expenditures and report any need for adjustments of industry fees at future meetings.



- New Motor Vehicle Board (NMVB) Annual Fee – As an update: This collection is now complete. Staff have collected \$766,948 from manufacturers and distributors under NMVB jurisdiction.

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

## First Quarter Revenue and Expenditure Summary

Fiscal Year 2023-2024

Covers July 1, 2023 to September 30, 2023

### REVENUES

New Dealer Licensing Fee:	\$205,330
Manufacturer and Distributor Fee	\$681,544
NMVB Filing Fee	\$2,800
Miscellaneous Services	\$160
Arbitration Program	\$716
Year-to-date total:	\$890,550

### EXPENDITURES

#### Payroll

Full-Time staff salaries:	Budgeted Amount \$1,075,000	Expended \$193,989	Remaining Balance \$881,011
Part-Time staff salaries:	Budgeted Amount \$77,000	Expended \$26,605	Remaining Balance \$50,395
Benefits:	Budgeted Amount \$645,000	Expended \$105,496	Remaining Balance \$539,504

#### Operating Expense and Equipment

*General Expense* (includes equipment, office supplies, dues, legal library, etc.)  
Budgeted Amount \$34,003 Expended \$2,626 Remaining Balance \$31,377

*Rent:* Budgeted Amount \$5,000 Expended \$0.00 Remaining Balance \$5,000

*Facilities Planning:* Budgeted Amount \$5,000 Expended \$427 Remaining Balance \$4,573

*Professional Services (Attorney General - OAH):* Budgeted Amount \$120,407 Expended \$8,635 Remaining Balance \$111,772

*Professional Services (Court Reporters):* Budgeted Amount \$23,000 Expended \$2,335 Remaining Balance \$20,665

#### TOTAL OPERATING EXPENSE AND EQUIPMENT

Budgeted Amount \$245,000; Expenditure Year to Date \$17,709 – 7%; Balance Remaining \$227,291 – 93%

#### GRAND TOTAL – Fiscal Year 2023-2024

Budgeted Amount \$2,073,000; Expenditure Year to Date \$344,927 - 17%; Balance Remaining \$1,728,073 - 83%



## Memorandum

Date : **APRIL 2, 2024**

To : **POLICY AND PROCEDURE COMMITTEE**  
**JAKE STEVENS, CHAIR**  
**KATHRYN 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. The changes from 2023 are highlighted in underline and strikeout font, and pertain to:

- 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.
- 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 limited, the Executive Director was granted discretion to assign additional merits hearings to OAH outside the current assignment log with Executive Committee permission.
- The Executive Director has discretion to remove an ALJ from an assignment log based on performance provided the Policy and Procedure Committee is consulted in advance.
- 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. In the event a Board ALJ is not available, OAH would be the default. 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.

Board Adopted Policies

Page 2

April 2, 2024

- Board Delegations were updated to delete obsolete references to appeals in Section 3008 and to reflect the Executive Director's temporary discretion to assign additional merits hearings to OAH outside the current assignment log.
- The statutory references to the California Public Records Act were updated in the (1) Document Request Policy, Waiver Request Policy, and Facsimile Request Policy, (2) Legislative Policy, and (3) Policy on Confidential Proposed Stipulated Decisions and Orders.
- 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.
- Board 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 Transcript Policy was amended so the parties are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts for the Board and OAH beginning on the first hearing day for all merits hearings and dispositive motions.

This matter is being agendized for informational purposes only at the April 25, 2024, 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.

<b>BOARD MEETINGS</b>		
<b>CATEGORY</b>	<b>POLICY</b>	<b>DATE</b>
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 Counsel<sup>1</sup> 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> <p>At the December 2, 2019, General Meeting,</p>	<p>March 18, 1997 - Business, Transportation &amp; Housing Agency<sup>2</sup> Audit Recommendation 7; January 8, 2003; September 27, 2011</p> <p>December 2, 2019;</p>

<sup>1</sup> 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.

<sup>2</sup> Business, Transportation & Housing Agency was superseded by the California State Transportation Agency on July 1, 2013.

CATEGORY	POLICY	DATE
Board Meeting Procedures -continued-	<p>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>	November 4, 2020  December 8, 1998; May 25, 2000
<u>Board Policy Review by the Ad Hoc Committee on Equity, Justice and Inclusion</u>	<u>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.</u>	<u>September 21, 2023</u>
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 recuse 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	<p>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 order, as follows:</p> <p>“Comments by the parties or by their counsel that are made regarding any proposed decision, ruling, or order must be limited to matters</p>	September 10, 2009; February 4, 2010

CATEGORY	POLICY	DATE
Public Comment During Consideration of Proposed Decision, Order, or Ruling Conducted Pursuant to the Administrative Procedure Act -continued-	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.”	
<b>BOARD MEMBERS</b>		
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"> <li>▪ 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.</li> <li>▪ State board members and designated staff may not accept gifts aggregating more than \$420<sup>3</sup> 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.</li> </ul>	April 27, 2001; March 23, 2010

<sup>3</sup> The gift amount is \$590.00 (2 CCR §§ 18700 and 18940.2). For purposes of Government Code section 89503, the adjusted annual gift limitation of \$590.00 is in effect January 1, 2023, through December 31, 2024.

CATEGORY	POLICY	DATE
Gifts and Honoraria -continued-	<ul style="list-style-type: none"> <li>▪ 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.</li> </ul>	
<b>COURT PROCEEDINGS</b>		
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
<p>Court Participation on Issues of Interest to the Board -continued-</p>	<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>	<p>June 26, 2008</p>
<p>Filing Amicus Briefs</p>	<p>The Board will not file any amicus briefs without the consent of Business, Transportation &amp; 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>	<p>July 12, 1996 - Business, Transportation &amp; Housing Agency Audit Recommendation 4</p>
<b>CONSUMER MEDIATION PROGRAM</b>		
<p>Consumer Mediation Program</p>	<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 &amp; 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
<b>HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES<sup>4</sup></b>		
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 Administrative Law Judge 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 Administrative Law Judges: Richard J. Lopez;<sup>5</sup> Jerold A. Prod;<sup>6</sup> and Norman Gregory (Greg) Taylor.<sup>7</sup> Marybelle Archibald<sup>8</sup> was also appointed,</p>	<p>August 21, 1997; September 30, 2004; June 26, 2008; November 20, 2008</p> <p>January 26, 2005; September 21, 2005; April 5, 2006; December</p>

<sup>4</sup> The term hearing officer and Administrative Law Judge 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 Administrative Law Judge.

<sup>5</sup> 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.

<sup>6</sup> Judge Prod retired in August 2013, so he was taken off the assignment logs.

<sup>7</sup> 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.

<sup>8</sup> 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-	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 Administrative Law Judges: 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 administrative law judges. These judges have been added to the assignment logs. In December 2019, four Board Members appointed Steven Smith as an administrative law judge subject to checking his references and being ratified by the full Board at its March 5, 2020, General Meeting.	13, 2007; September 27, 2011; January 18, 2017; December 2, 2019; March 5, 2020
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>The assignment logs were updated as follows:</p> <ul style="list-style-type: none"> <li>▪ If an ALJ's case resolves prior to the commencement of the hearing but after assignment of the matter, the ALJ is</li> </ul>	<p>September 30, 2004; April 21, 2005</p> <p>November 16, 2005; April 5, 2006; September 28, 2006</p> <p>February 4, 2014</p>

CATEGORY	POLICY	DATE
Case Assignments -continued-	<p>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.</p> <ul style="list-style-type: none"> <li>▪ If an ALJ must decline presiding over a merits hearing because he or she was 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.</li> </ul> <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 &amp; Motion Judge Assignment Log so her focus would be exclusively on settlement.</p> <p><u>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.</u></p> <p><u>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</u></p>	<p>June 28, 2016, January 18, 2017, July 19, 2017, November 7, 2017</p> <p><u>January 25, 2023: April 28, 2023</u></p> <p><u>April 28, 2023</u></p>

CATEGORY	POLICY	DATE										
Case Assignments -continued-	<p>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> <table border="0" data-bbox="617 735 966 924"> <tr> <td>1, 6</td> <td>OAH</td> </tr> <tr> <td>2, 7</td> <td>Pipkin</td> </tr> <tr> <td>3, 8</td> <td>OAH</td> </tr> <tr> <td>4, 9</td> <td>Nelsen</td> </tr> <tr> <td>5, 0</td> <td>Woodward-Hagle</td> </tr> </table> <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>	1, 6	OAH	2, 7	Pipkin	3, 8	OAH	4, 9	Nelsen	5, 0	Woodward-Hagle	September 21, 2023
1, 6	OAH											
2, 7	Pipkin											
3, 8	OAH											
4, 9	Nelsen											
5, 0	Woodward-Hagle											
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, 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</p>	December 8, 1998; November 28, 2000										

CATEGORY	POLICY	DATE
Hearing Officer Selection -continued-	<p>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 Administrative Law Judge 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 Administrative Law Judge 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
Separation of Powers	<p>The Board rules prevent the Administrative Law Judge at a settlement conference from presiding at the hearing on the merits or in any proceeding relating to motions for temporary relief or interim</p>	September 9, 1998

<b>CATEGORY</b>	<b>POLICY</b>	<b>DATE</b>
Separation of Powers -continued-	orders unless otherwise stipulated by the parties (13 CCR § 551.11).	
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 1

**CASE PROCESSING**

<b>CATEGORY</b>	<b>POLICY</b>	<b>DATE</b>
Administrative Procedure Act	To ensure compliance with the Administrative Procedure Act, the Board has adopted the following discretionary procedures: <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> <li>▪ 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.</li> </ul>	August 21, 1997
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	April 27, 2001

CATEGORY	POLICY	DATE
Case Management Procedures -continued-	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.	
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
<b>ADMINISTRATION</b>		
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.	April 26, 2002; February 2005
Administrative Law Judge Guide	The Board will establish and maintain a <i>New Motor Vehicle Board Administrative Law Judges' Benchbook</i> .  To timely revise the <i>Benchbook</i> , which is an internal training manual, future updates be	April 26, 2002; March 11, 2003; March 9, 2004; March 8, 2005; March 8, 2006; March 28, 2007;



CATEGORY	POLICY	DATE
Administrative Law Judge Guide -continued-	reported on the Executive Director's Report.	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. <sup>9</sup>	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
Audit Compliance Officer	The Board has designated the General Counsel <sup>10</sup> to service as its Audit Compliance Officer to ensure	November 20, 2008; May 26,

<sup>9</sup> 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.

<sup>10</sup> See footnote 1.

CATEGORY	POLICY	DATE
Audit Compliance Officer -continued-	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.	2011
Budget Process	The Fiscal Committee will meet each May to review the Board's proposed budget. Consideration of the budget will be agendized 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 "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</p>	<p>March 18, 1997 - Business, Transportation &amp; Housing Agency Audit Finding 15</p> <p>November 20, 2008</p> <p>September 10, 2009</p>

CATEGORY	POLICY	DATE
Delegation in Compliance with the 1996 Performance Audit Conducted by Business, Transportation & Housing Agency -continued-	<p>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 being adopted at the July 15, 2014, General Meeting. 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 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</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>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 promotion to Staff Services Manager II and Robin Parker's promotion to Chief Counsel.</p> <p><u>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.</u></p>	<p><u>April 28, 2023</u></p>
Delegation of Authority Concerning Promulgating Regulations	<p>The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the 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>April 26, 2002</p>
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><u>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.</u></p>	<p>October 22, 1996; September 6, 2001; December 13, 2006</p> <p><u>January 25, 2023</u></p>
Document Retention Policy	<p>The Board adopted Document Retention Policy:</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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</li> </ul>	<p>October 29, 2002</p>

CATEGORY	POLICY	DATE
Document Retention Policy -continued-	<p>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.</p> <ul style="list-style-type: none"> <li>▪ 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.</li> <li>▪ 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.</li> </ul>	
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. Soteris 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 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	August 20, 1996; December 12, 2000

CATEGORY	POLICY	DATE
Information Security -continued-	organization's systems and procedures are in compliance.	
Informational Materials	<p>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 &amp; Housing Agency Audit Recommendation 13)</p> <p>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.</p> <p>The Board will establish and maintain an <i>Export or Sale-for-Resale Prohibition Policy Protest Guide</i></p>	<p>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; <b>April 28, 2023</b></p> <p>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; <b>January 25, 2023</b></p> <p>March 5, 2020; February 16, 2021;</p>

CATEGORY	POLICY	DATE
Informational Materials -continued-	that assists associations, as defined, in filing a Vehicle Code section 3085 protest.	March 30, 2022; January 25, 2023
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 California State Transportation Agency (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> <p>A Legislative Committee analysis will not be subject to disclosure under the Public Records Act.</p>	June 7, 2019

CATEGORY	POLICY	DATE
Legislative Committee -continued-	<u>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.</u>	<u>January 25, 2023</u>
Legislative Policy	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.	August 20, 1996 June 7, 2019
Licensees for Purposes of Collecting Annual Board Fees	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).	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>	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



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>
<u>Recruitment and Hiring Practices (Bilingual Employees)</u>	<u>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.</u>	<u>September 21, 2023</u>
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
Transcript Policy	<p>The Board will allow the parties to purchase transcripts directly from the court reporter. The Board will continue to purchase transcripts from the court reporting service. For all merits hearings and dispositive motions, reporting costs including transcript fees, appearance and transcript delivery fees, per diem costs, Realtime set-up fees, expedite rates, and cancellation fees will be allocated as follows:</p> <p>1. For the first hearing day (merits or dispositive motion), the Board will be responsible for</p>	<p>March 12, 2002, April 26, 2002, March 20, 2012, June 26, 2013, March 13, 2018</p>

CATEGORY	POLICY	DATE
<p>Transcript Policy -continued-</p>	<p>arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired.</p> <p>2. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fees, the delivery fee and any other costs including Realtime set-up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired. 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.</p> <p>3. 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. Counsel can utilize the Board's contracted reporting service but are not required to do so. 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.</p> <p>For instances in which an Administrative Law Judge 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>	<p>September 21, 2023</p>

<b>CATEGORY</b>	<b>POLICY</b>	<b>DATE</b>
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 : **APRIL 2, 2024**

To : **POLICY AND PROCEDURE COMMITTEE**  
**JAKE STEVENS, CHAIR**  
**KATHRYN DOI, MEMBER**

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

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. The table below illustrates the matters by category that were heard by each Judge in 2023.<sup>1</sup>

Administrative Law Judge <sup>2</sup>	Mandatory Settlement Conference	Law and Motion Hearing	Discovery Hearing	Merits Hearing
Bayne	N/A	0	0	N/A
OAH	---	---	---	1
Nelsen	0	2	1	0
Pipkin	0	0	1	0
Skrocki	N/A	16	5	N/A
Wong <sup>3</sup>	6	N/A	N/A	N/A
Woodward-Hagle	0	1	0	1

<sup>1</sup> The hearings and conferences are counted by the case; not by the occurrence. For example, if the hearing of a Motion to Dismiss was resumed three times, only a single hearing is counted. Similarly, if six protests were consolidated for purposes of a single hearing to rule on discovery objections, the single hearing is counted. In addition, pre-hearing Law and Motion in relation to a merits hearing is not counted separately.

<sup>2</sup> Due to the transition of Merits Hearings to the Office of Administrative Hearings, ALJ Matteucci and ALJ Smith were taken off the assignment logs. Although Robin Parker is authorized to preside over law and motion hearings, discovery hearings, and Mandatory Settlements Conferences as needed, no assignments were made in this regard so she is not reflected in the table.

<sup>3</sup> At the June 28, 2016, General Meeting, Meryl Wong was temporarily designated the Mandatory Settlement Conference ALJ. At the November 7, 2017, General Meeting, Judge Wong was designated as the permanent Mandatory Settlement Conference ALJ.

ALJ Assignments

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April 2, 2024

HEARING TYPE	2023 TOTAL
Law and Motion	19
Discovery	7
Mandatory Settlement Conference	6
Merit Hearings	2
Merit Hearing Days	13*

\* The hearing in PR-2803-22 *KM3G, Inc. d/b/a Putnam Kia of Burlingame v. Kia America, Inc.* resumed for four days February 12-15, 2024.

This matter is for information only at the April 25, 2024, 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** : APRIL 2, 2024

**To** : POLICY AND PROCEDURE COMMITTEE  
JAKE STEVENS, CHAIR  
KATHRYN 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:

- With the addition of the Office of Administrative Hearings (OAH) to the Board’s Merit Hearings Judge Assignment Log, footnote 1 on page 2 was added to reflect that an Administrative Law Judge means an Administrative Law Judge of the Board or the OAH.
- The language pertaining to waiver of the \$200 filing fee was clarified on page 3. The reference to financial hardship was deleted as the Executive Director may grant the fee waiver upon a showing of good cause. For consistency, this change was also made in the *Guide to the New Motor Vehicle Board*.
- As a result of the relocation to the Department of Motor Vehicles, the Board does not have a landline or fax machine. If a party would like to file a protest via facsimile, the Board would accommodate this request. Footnote 2 on page 3 was added to request an Association seeking to file a protest via facsimile contact the Board’s legal staff in advance at (916) 445-1888 or [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov).
- At the September 21, 2023, General Meeting, the Board adopted Transcript Policy was amended so the parties are equally responsible for scheduling the court reporter and for paying all court reporter-related fees and costs including hearing transcripts for the Board and OAH beginning on the first hearing day for all merits hearings and dispositive motions. These changes are reflected in the heading “Court Reporting and Transcripts of Board Proceedings” on pages 7-8.
- On page A-1 of the Appendix, the following changes were made:

Export Policy Protest Guide

Page 2

April 2, 2024

- Gender specific language was replaced with gender neutral language.
- The reference to “fax number” was deleted because the Board does not have a landline or fax machine.
- References to a specific type of address (office or residence) were deleted.

This matter is being agendaized for discussion and consideration at the April 25, 2024, General Meeting.

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



**STATE OF CALIFORNIA**  
**NEW MOTOR VEHICLE BOARD**

***Export or Sale-For-Resale Prohibition  
Policy Protest Guide***

*Vehicle Code Section 3085, et seq.*

April 2024



# **STATE OF CALIFORNIA**

## **NEW MOTOR VEHICLE BOARD**

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**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  
KARTHICK RAMAKRISHNAN  
JACOB STEVENS

#### **Dealer Members**

ANNE SMITH BOLAND  
ASHLEY DENA  
BRADY SCHMIDT

### **EXECUTIVE STAFF**

TIMOTHY M. CORCORAN  
Executive Director

### **LEGAL STAFF**

ROBIN P. PARKER  
Chief Counsel  
JASON A. ROSE  
Senior Staff Counsel

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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 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818

Correspondence can also be sent via email at [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov). The telephone number of the Board is (916) 445-1888 and the website address is [www.nmvp.ca.gov](http://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](http://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](http://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 Judge<sup>1</sup> (“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)

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<sup>1</sup> 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,<sup>2</sup> 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](mailto:nmvp@nmvp.ca.gov) or mailed by certified or registered mail to 2415 1<sup>st</sup> 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, money order or an authorized credit card charge payable to the New Motor Vehicle Board, must accompany the protest and notice of appearance. **In the event of a financial hardship, E**ither the protestant or respondent may submit a request for a fee waiver, **requesting that t**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. **(13 CCR § 553.40)**

### **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.

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<sup>2</sup> **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](mailto: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 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:

<b>Content Requirements</b>	
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, money order or authorize a 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:

<b>Step</b>	
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**

~~The Board arranges for a court reporter for all hearings on the merits of a protest and for all hearings on motions that may be dispositive. Parties to actions before the Board may order transcripts of hearings and arrange for delivery and payment directly from the court reporter.~~

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 and Transcript Delivery Fees, Per Diem Costs, Realtime Set-Up Fees, Expedite Rates, Cancellation Fees and any other Costs	Transcript Fees for the Board and Office of Administrative Hearings (if applicable)
Hearings on the merits and dispositive motions <del>First Day</del>	Board (excluding Realtime set up fees) Participating parties	Board (requesting party or parties may order and pay for copies of official transcripts) Participating parties
<del>Hearings on the merits and dispositive motions</del> <del>After First Day</del>	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

~~As indicated above, for the first hearing day (merits or dispositive motion), the Board will be responsible for arranging reporting services, paying for the reporter's appearance fee, the delivery fee and any other costs excluding the Realtime set up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript, if desired. For each subsequent day, the Board or counsel, at the Board's discretion, will arrange reporting services and the Board will order the parties, on an equal basis, to pay the court reporter service for the reporter's appearance fee, the delivery fee and any other costs including Realtime set up fees, and the Board's cost of the hearing transcript. Counsel will remain responsible for purchasing their own transcript(s), if desired.~~

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. ~~Counsel can utilize the Board's contracted reporting service but are not required to do so.~~ 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.



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:

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## Memorandum

Date : **APRIL 2, 2024**

To : **POLICY AND PROCEDURE COMMITTEE**  
**JAKE STEVENS, CHAIR**  
**KATHRYN 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 January 25, 2023, General Meeting. Each year it is thoroughly reviewed for accuracy. The Board composition and staff updates are reflected in the attached Guide along with several non-substantive changes. The following additional edits are highlighted yellow in underline and strikeout font:

- At the Department of Motor Vehicle's request, the language on page 12 pertaining to information DMV Inspectors will require was removed.
- Prior to recent amendments, manufacturers and distributors were precluded from competing with their franchised dealers of the same line-make within the 10 mile relevant market area. There was no preclusion on factory-owned dealers if there were no independent dealers within 10 miles of the proposed location. Subdivision (o) of Vehicle Code section 11713.3 was amended effective January 1, 2024 to remove references to "same line-make" and "relevant market area." (Assembly Bill 473, 2023 Stats., Ch. 332) This amendment was designed to ensure the sale of vehicles through established dealer networks. Conforming changes were made on page 14.

This matter is being agendized for discussion and consideration at the April 25, 2024, General Meeting. 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



*State of California*

*NEW MOTOR VEHICLE BOARD*

***INFORMATIONAL GUIDE  
FOR MANUFACTURERS  
AND DISTRIBUTORS***

**April 2024**

**STATE OF CALIFORNIA**  
**NEW MOTOR VEHICLE BOARD**

2415 1<sup>st</sup> Avenue, MS L242  
Sacramento, California 95818  
Phone: (916) 445-1888  
Email: [nm vb@nm vb.ca.gov](mailto:nm vb@nm vb.ca.gov)  
Website: [www.nm vb.ca.gov](http://www.nm vb.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  
KARTHICK RAMAKRISHNAN  
JACOB STEVENS

**Dealer Members**

ANNE SMITH BOLAND  
ASHLEY DENA  
BRADY SCHMIDT

**EXECUTIVE STAFF**

TIMOTHY M. CORCORAN  
Executive Director

**LEGAL STAFF**

ROBIN P. PARKER  
Chief Counsel  
JASON A. ROSE  
Senior Staff Counsel



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## INTRODUCTION

This Informational Guide has been prepared to assist manufacturers<sup>1</sup> 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 [nmvp@nmvb.ca.gov](mailto:nmvp@nmvb.ca.gov). The Board's website ([www.nmvp.ca.gov](http://www.nmvp.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).<sup>2</sup>

Created in 1967, the Board, originally named the New Car Dealer's Policy and Appeals Board, was limited to hearing appeals<sup>3</sup> 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.

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<sup>1</sup> Throughout this Guide, the terms dealer and franchisee are used interchangeably, as are the terms manufacturer/distributor and franchisor.

<sup>2</sup> 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.

<sup>3</sup> 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.”<sup>4</sup>

\*\* 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

<sup>4</sup> 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. <sup>5</sup>	
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.

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<sup>5</sup> 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 1<sup>st</sup> 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. <sup>6</sup>	
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-make<sup>7</sup> 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.”

<sup>6</sup> See Footnote 5.

<sup>7</sup> 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, 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 331.3.” 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.<sup>8</sup>

**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).<sup>9</sup> For example, the California RV Show sponsored by the Recreation Vehicle Industry Association would be exempt from the Vehicle Code section 3072 notice requirements.

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<sup>8</sup> 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..."

<sup>9</sup> 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. <sup>10</sup>	
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.

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<sup>10</sup> 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.<sup>11</sup>

**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 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.

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<sup>11</sup> 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
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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(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				
5. Change of Corporate Name/LLC or LLP Name	X	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, 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. <sup>12</sup>	
Note: If you are unsure of the correct procedures, you may want to consult with legal counsel.	

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<sup>12</sup> 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.

**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.<sup>13</sup> The First Appellate 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

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<sup>13</sup> 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. Vehicle Code section 11713.3(o) clarifies the limited circumstances in which a manufacturer or distributor may operate or control a dealership within 10 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 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.<sup>14</sup>

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.

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<sup>14</sup> 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,<sup>15</sup> 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 [nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.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.

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<sup>15</sup> 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).

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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.

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Sincerely,

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Manufacturer/Distributor

cc: New Motor Vehicle Board

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## 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

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## 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))<sup>1</sup>

**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.)

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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.*

<sup>1</sup> 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))<sup>1</sup>

**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.<sup>2</sup>

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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.*

<sup>1</sup> 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...”

<sup>2</sup> For recreational vehicles, 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

*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.*



## Memorandum

Date : **APRIL 2, 2024**

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 THE DEFINITION OF ADMINISTRATIVE LAW JUDGE IN SUBDIVISION (a) OF SECTION 550 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS (DEFINITIONS) 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**

For decades, the legal staff have taken an active role in merits hearings by providing support throughout the hearing to the Board assigned Administrative Law Judge (ALJ) and by reviewing drafts of their proposed decision for consistency and accuracy. With the transition to the Office of Administrative Hearings (OAH), the Board's role in this process is limited and legal staff will not review the Proposed Decision until it is signed by the OAH ALJ.

By statute, the Board has 10 days after receipt of the ALJ's Proposed Decision to file it as a public record and serve each party and their counsel.<sup>1</sup> (Veh. Code §§ 3067(b), 3081(b), and 3085.4(b)) This may not be enough time for the Board's legal staff to thoroughly review, analyze, and verify the factual and legal accuracy of the Proposed Decision. Additionally, this 10 day period is included in the 30 day statutory period the Board has to consider the Proposed Decision at a noticed meeting.<sup>2</sup> (Veh. Code §§ 3067(a), 3081(a), and 3085.4(a))

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<sup>1</sup> The Administrative Procedure Act (APA) allows 30 days after receipt by the agency of a Proposed Decision to file it as a public record and serve each party and their counsel. (Gov. Code § 11517(c)(1)) However, the specific statutes in the Vehicle Code would prevail over a conflicting or inconsistent provision in the APA so the Board only has 10 days. (Gov. Code §§ 11410.50, 11415.10, and 11415.20)

<sup>2</sup> The APA allows 100 days after receipt by the agency of a Proposed Decision to act. If the agency fails to timely act the proposed decision is deemed adopted by the agency. (Gov. Code § 11517(c)(2)) In a protest pertaining to new motor vehicles or RVs, "[i]f the board fails to act within 30 days after the hearing, within 30 days after the board receives a proposed decision when the case is heard before an administrative law judge alone, or within a period necessitated by Section 11517 of the Government Code, or as may be mutually agreed upon by the parties, then the proposed action shall be deemed to be approved." (Veh. Code §§ 3067(a), 3081; underline added.) As noted in footnote 1, the specific provisions in the Vehicle Code prevail over the APA.

Although the Board can request the parties stipulate to extend the deadline, this is not a long-term solution. (Veh. Code §§ 3067, 3081 and 3085.4) Therefore, staff are proposing amending the definition of Administrative Law Judge in subdivision (a) of Section 550 of Title 13 of the California Regulations. The proposed amendments are as follows:

§ 550. Definitions.

For the purposes of these regulations:

(a) "Administrative law judge" or "ALJ" means an administrative law judge of the board or Office of Administrative Hearings. For purposes of Vehicle Code sections 3067(b), 3081(b), and 3085.4(b), an administrative law judge means an administrative law judge of the board and not Office of Administrative Hearings.

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3066, 3067, 3070, 3072, 3074, 3075, 3076, 3080, 3081, and 3085, 3085.2, and 3085.4, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

This would limit the 10 day period to file and serve a Proposed Decision to hearings in which a Board ALJ presided. The APA would apply to hearings held at OAH and the Board would have 30 days to file and serve the Proposed Decision.

Amending the time period within which the Board is statutorily required to consider a Proposed Decision requires further analysis and likely legislation. In the meantime, the staff will request the parties stipulate to allow additional time for Board consideration.

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 agendized for discussion and consideration at the April 25, 2024, General Meeting.

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

## PROPOSED TEXT OF REGULATION

### § 550. Definitions

For the purposes of these regulations:

(a) "Administrative law judge" or "ALJ" means an administrative law judge of the board or Office of Administrative Hearings. For purposes of Vehicle Code sections 3067(b), 3081(b), and 3085.4(b), an administrative law judge means an administrative law judge of the board and not Office of Administrative Hearings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(t) "Protest" means an action filed with the board by a franchisee pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, or 3076. A protest also means an action filed with the board by an association pursuant to Vehicle Code section 3085.

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

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

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

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

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

NOTE: Authority cited: Section 3050, Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3066, 3067, 3070, 3072, 3074, 3075, 3076, 3080, 3081, and 3085, 3085.2, and 3085.4, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.



***EXECUTIVE  
DIRECTOR'S  
REPORT***

***April 25, 2024***

**A.**

**ADMINISTRATIVE  
MATTERS**



Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>ADMINISTRATION COMMITTEE</b>			
<b>1. <u>Update Concerning Moving the Board's Offices to DMV Headquarters</u></b> Tim Corcoran	Update regarding moving of the Board's Offices upon the expiration of the current lease to DMV Headquarters.	Ongoing	In progress.
<b>2. <u>Update Guide to the New Motor Vehicle Board</u></b> Robin Parker	Update the <i>Guide to the New Motor Vehicle Board</i> to incorporate statutory and regulatory changes.	April 2024	In progress. The revised Guide will be considered at the April 25, 2024, General Meeting.
<b>BOARD DEVELOPMENT COMMITTEE</b>			
<b>1. <u>Schedule Board Member Education Presentations</u></b> 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.
<b>2. <u>Solon C. Soteras Employee Recognition Award Recipient</u></b> Tim Corcoran	Compile the nominations provided by staff and select a nominee for the Solon C. Soteras Employee Recognition Award.	Summer 2024	In progress. The nominee will be considered at the Summer General Meeting.
<b>EXECUTIVE COMMITTEE</b>			
<b>1. <u>Strategic Plan July 2024 - June 2030</u></b> Tim Corcoran	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 will be considered at the April 25, 2024, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>2. <u>Annual review of Mission and Vision Statements</u></b> Tim Corcoran	Board will annually review its mission and vision statements.	Summer 2024	In progress. The Board's mission and vision statements will be reviewed at the Summer General Meeting.
<b>3. <u>Consider Amendments to Board delegations</u></b> Tim Corcoran, Robin Parker	Review and consider amendments to the Board adopted delegations in compliance with the 1996 Performance Audit	Summer 2024	In progress. Amendments to the Board adopted delegations will be considered at the Summer General Meeting.
<b>FISCAL COMMITTEE</b>			
<b>1. <u>Quarterly Financial Reports</u></b> Tim Corcoran, Suzanne Luke	Quarterly reports on the Board's financial condition and related fiscal matters.	Ongoing	In progress.
<b>2. <u>Status report concerning the Board's collection of the Annual Board Fee</u></b> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the Board's collection of the Annual Fee.	Summer 2024	In progress. A status report will be provided at the Summer General Meeting.
<b>3. <u>Status Report on the Collection of Fees for the Arbitration Certification Program</u></b> Tim Corcoran, Suzanne Luke	The staff will provide a report concerning the annual fee collection for the Department of Consumer Affairs, Arbitration Certification Program.	Summer 2024	In progress. A status report will be provided at the Summer General Meeting.
<b>4. <u>Proposed Board Budget for the Next Fiscal Year</u></b> Tim Corcoran, Suzanne Luke	The staff, in conjunction with the Fiscal Committee, will discuss and consider the Board's proposed Budget for fiscal year 2024-2025.	Summer 2024	In progress. The 2024-2025 Budget will be presented for consideration at the Summer General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>GOVERNMENT AND INDUSTRY AFFAIRS COMMITTEE</b>			
<p><b>1. <u>Host Board Administrative Law Judge Roundtable</u></b> Robin Parker, Jason Rose</p>	<p>Host a Board Administrative Law Judge (“ALJ”) Roundtable for purposes of education and training. Provide an opportunity for ALJs to meet in an informal setting, exchange ideas, and offer suggestions to improve the case management hearing process.</p>	<p>April 2024</p>	<p>In progress. The training provided to the Office of Administrative Hearing ALJs is scheduled for the Board ALJs on April 18, 2024.</p>
<p><b>2. <u>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></b> Tim Corcoran</p>	<p>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.</p>	<p>Ongoing</p>	<p>In progress.</p>

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>3. <u>Host Board Industry Roundtable</u></b> Tim Corcoran, 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. This year's focus will be on the Board's programs and the Department of Motor Vehicles' Investigations Division, Occupational Licensing Inspections Program, and the newly formed Industry Services Branch.	TBD	In progress. The Industry Roundtable date and location are pending further discussion.
<b>LEGISLATIVE COMMITTEE</b>			
<b>1. <u>Review of Pending Legislation</u></b> Tim Corcoran, Jason Rose	The staff will provide an overview of enacted legislation of special and general interest, and pending federal legislation.	April 2024	In progress. An update will be provided at the April 25, 2024, General Meeting.
<b><u>Review of Pending and Enacted Legislation</u></b> Tim Corcoran, Robin Parker	The staff will provide an overview of pending legislation of special interest and general interest.	December 2023	<u>Completed</u> A report on pending and enacted legislation was presented at the December 8, 2023, General Meeting.

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>POLICY AND PROCEDURE COMMITTEE</b>			
<p><b><u>1. Report on the Assignment of Cases to Board Administrative Law Judges</u></b> Robin Parker</p>	<p>Annual report on the assignment of cases to Board Administrative Law Judges (“ALJs”).</p>	<p>April 2024</p>	<p>In progress. A report on the assignment of cases to Board ALJs will be presented at the April 25, 2024, General Meeting.</p>
<p><b><u>2. Update the Informational Guide for Manufacturers and Distributors</u></b> Robin Parker</p>	<p>Update the <i>Informational Guide for Manufacturers and Distributors</i>.</p>	<p>April 2024</p>	<p>In progress. The revised Guide will be considered at the April 25, 2024, General Meeting.</p>
<p><b><u>3. Update the Export or Sale-For-Resale Prohibition Policy Guide</u></b> Robin Parker</p>	<p>Update the <i>Export or Sale-For-Resale Prohibition Policy Guide</i> for Vehicle Code section 3085 protests filed by an association, as defined.</p>	<p>April 2024</p>	<p>In progress. The revised Guide will be considered at the April 25, 2024, General Meeting.</p>
<p><b><u>4. Draft proposed regulation amending the definition of Administrative Law Judge in subdivision (a) of section 550 of Title 13 of the California Code of Regulations</u></b> Robin Parker</p>	<p>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.</p>	<p>April 2024</p>	<p>In progress. The proposed amendments will be considered at the April 25, 2024, General Meeting.</p>

Project Title/Manager	Project Goal (Description)	Estimated Completion Date	Status
<b>AD HOC COMMITTEE ON EQUITY, JUSTICE AND INCLUSION</b>			
<p><b>1. <u>Develop Strategies for Board Consideration</u></b> Tim Corcoran</p>	<p>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...” Draft a Mission Statement for consideration by the full Board.</p>	<p>Ongoing</p>	<p>In progress. The Committee considered new policies at its May 23, 2023, that were adopted by the Board at the September 21, 2023, General Meeting.</p>

**B.**

**CASE**

**MANAGEMENT**

# CASE VOLUME

NOVEMBER 21, 2023, THROUGH APRIL 8, 2024

VEHICLE CODE SECTION	CASE TYPE	NUMBER OF NEW CASES	NUMBER OF RESOLVED CASES	NUMBER OF PENDING CASES
3060	Termination	1	2	6
3060	Modification	1	1	14
3062	Establishment	0	1	0
3062	Relocation	1	1	4
3062	Off-Site Sale	0	0	0
3064	Delivery/Preparation Obligations	0	0	0
3065	Warranty Reimbursement	0	6	1
3065.1	Incentive Program Reimbursement	1	0	2
3065.3	Performance Standard	0	0	0
3065.4	Retail Labor Rate or Retail Parts Rate	0	1	2
3070	Termination	5	5	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	4
3076	Incentive Program Reimbursement	0	0	0
3085	Export or Sale-For Resale	0	0	0
3050(b)	Petition	0	0	1
<b>TOTAL CASES:</b>		<b>9</b>	<b>17</b>	<b>34</b>



# PENDING CASES

BY CASE NUMBER

<b>ABBREVIATIONS</b>			
<b>ALJ</b>	Administrative Law Judge	<b>Bd. Mtg.</b>	Board Meeting
<b>HRC</b>	Hearing Readiness Conference	<b>IFU</b>	Informal Follow-Up
<b>MH</b>	Merits Hearing	<b>CMH</b>	Continued Merits Hearing
<b>RMH</b>	Resumed Merits Hearing	<b>MSC</b>	Mandatory Settlement Conference
<b>CMSC</b>	Continued Mandatory Settlement Conference	<b>RMSC</b>	Resumed Mandatory Settlement Conference
<b>MTCP</b>	Motion to Compel Production	<b>MTC</b>	Motion to Continue
<b>MTD</b>	Motion to Dismiss	<b>PHC</b>	Pre-Hearing Conference
<b>CPHC</b>	Continued Pre-Hearing Conference	<b>RPHC</b>	Resumed Pre-Hearing Conference
<b>PD</b>	Proposed Decision	<b>RFPD</b>	Requests for Production of Documents
<b>PSDO</b>	Proposed Stipulated Decision and Order	<b>ROB</b>	Rulings on Objections
<b>CROB</b>	Continued Rulings on Objections	<b>RROB</b>	Resumed Rulings on Objections
<b>SC</b>	Status Conference	<b>CSC</b>	Continued Status Conference
<b>* Consolidated, non-lead case</b>			

# PROTESTS

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
1.	PR-2501-17 1-19-17	RSC: 4-8-24	Stevens Creek Luxury Imports, Inc. dba AutoNation Maserati Stevens Creek v. Maserati North America, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Randy Oyler, Tom McDonnell, Bob Davies	Modification
2.	PR-2506-17* 1-23-17	RSC: 4-8-24	Rusnak/ Pasadena, dba Rusnak Maserati of Pasadena v. Maserati North America, Inc.	Protestant: Christian Scali, Bert Rasmussen  Respondent: Randy Oyler, Tom McDonnell, Bob Davies	Modification

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
3.	PR-2759-21 12-30-21	Post-Hearing Briefing Respondent's closing: 1-18-24 Protestant's Closing and Response: 4-4-24 Respondent's Reply: 5-2-24 OAH's Proposed Decision: 6-3-24 Decision to parties: 6-13-24 Board action by: 7-3-24	KPAuto, LLC, dba Putnam Ford of San Mateo v. Ford Motor Company	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Steven M. Kelso, Gwen J. Young, H. Camille Papini-Chapla	Retail Labor Rate
4.	PR-2769-22 3-25-22	Parties are working on settlement IFU: 5-6-24	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
5.	PR-2770-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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

**April 2024 Executive Director's Report**

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
6.	PR-2771-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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
7.	PR-2773-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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
8.	PR-2774-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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

CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
9. PR-2775-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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
10. PR-2776-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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
11. PR-2777-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	Powersports Unlimited, Inc., a California corporation dba BMW Motorcycles of Escondido	Protestant: Halbert B. Rasmussen  Respondent: Stephen M. Bledsoe, Eric Y. Kizirian	Modification
12. PR-2778-22* 3-25-22	Parties are working on settlement IFU: 5-6-24	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

**April 2024 Executive Director's Report**

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
13.	PR-2789-22* 5-11-22	Parties are working on settlement IFU: 5-6-24	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
14.	PR-2803-22 9-15-22	Post-Hearing Briefs: Opening 5-14-24 Reply 6-25-24 Proposed Decision final 7-25-24 Board Meeting by 8-23-24	KM3G Inc., d/b/a Putnam Kia of Burlingame v. Kia America Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Jonathan R. Stulberg, John J. Sullivan	Retail Labor Rate
15.	PR-2808-22 11-14-22	ROB: 9-5-24 HRC: 3-25-25 MH: 5-12-25 (10 days)	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian  Respondent: Lisa M. Gibson, Amy M. Toboco, Steven McFarland, Patrick Quinn	Termination

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
16.	PR-2812-22 11-30-22	Parties working on settlement IFU: 4-15-24	San Luis Obispo Hyundai LLC dba Hyundai San Luis Obispo v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Shaun Kim, Sarah Rathke, Nathan Leber	Franchisor Incentive
17.	PR-2821-23 5-11-23	MSC: 4-22-24	Liberty Motors, Inc., dba Liberty Chevrolet v. General Motors LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Ashley Fickel	Modification
18.	PR-2822-23 5-12-23	SC: 5-2-24	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell  Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (15-day)

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
19.	PR-2823-23* 5-19-23	SC: 5-2-24	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell  Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (15-day)
20.	PR-2824-23* 5-19-23	SC: 5-2-24	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell  Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (60-day)
21.	PR-2826-23 5-25-23	HRC: 5-22-24 MH: 8-6-24 (10 days)	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, Elayna Fiene, April Connally	Warranty

**April 2024 Executive Director's Report**



	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
22.	PR-2827-23 6-1-23	Parties working on settlement IFU: 4-18-24	72 Hour LLC. dba Chevrolet of Watsonville, a California limited liability company v. General Motors LLC, a Delaware Limited Liability Company	Protestant: Halbert B. Rasmussen  Respondent: Ashley Fickel	Modification
23.	PR-2829-23* 6-16-23	SC: 5-2-24	Gen 2 H-Cars, Inc., d/b/a Frank Hyundai v. Hyundai Motor America, Inc.	Protestant: Michael J. Whitton, Jason T. Allen, W. Kirby Bissell  Respondent: Kate Tuma, Shaun Kim, Sarah K. Rathke, Anna Huttner, Jesse L. Taylor	Termination (60-day)
24.	PR-2840-23 9-18-23	Parties working on settlement RPHC 4-22-24	Western Auto Experts, Inc., dba Barber RV v. Forest River, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)
25.	PR-2841-23 9-18-23	Parties working on settlement RPHC 4-22-24	Western Auto Experts, Inc., dba Barber RV v. Thor Motor Coach, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)

**April 2024 Executive Director's Report**

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
26.	PR-2842-23 9-18-23	Parties working on settlement RPHC 4-22-24	Western Auto Experts, Inc., dba Barber RV v. Winnebago Industries, Inc.	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)
27.	PR-2843-23 9-18-23	Parties working on settlement RPHC 4-22-24	Western Auto Experts, Inc., dba Barber RV v. Winnebago of Indiana, LLC	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent: Mark Clouatre, Adrienne Toon	Warranty (RV)
28.	PR-2844-23 11-6-23	Parties working on discovery and hearing schedule IFU: 4-16-24	Knight Sunrise Fontana LLC, a California limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Victor Danhi, Franjo Dolenac  Respondent: Steve Kelso  Intervenor: Gavin. M. Hughes, Robert A. Mayville, Jr.	Relocation

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
29.	PR-2845-23* 11-7-23	Parties working on discovery and hearing schedule IFU: 4-16-24	Chino Ford, LLC, dba Chino Hills Ford, a limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Alton Burkhalter, Ros Lockwood  Respondent: Steve Kelso  Intervenor: Gavin. M. Hughes, Robert A. Mayville, Jr.	Relocation
30.	PR-2846-23* 11-8-23	Parties working on discovery and hearing schedule IFU: 4-16-24	Ford of Upland, LLC, a California limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Jason D. Annigian, James T. Ryan  Respondent: Steve Kelso  Intervenor: Gavin. M. Hughes, Robert A. Mayville, Jr.	Relocation
31.	PR-2853-24 2-5-24	Parties working on settlement IFU: 5-6-24	Hyundai of El Cajon v. Hyundai Motor America	Protestant: Gavin M. Hughes, Robert A. Mayville, Jr.  Respondent:  John P. Strelman	Franchisor Incentive

	CASE NUMBER/ DATE FILED	STATUS	PROTEST NAME	COUNSEL	CASE TYPE
32.	PR-2854-24 2-22-24	ROB: 9-5-24 HRC: 3-25-25 MH: 5-12-25 (10 days)	Martin Saturn of Ontario, Inc. dba Subaru of Ontario v. Subaru of America, Inc.	Protestant: Timothy D. Robinett, Gary H. Prudian  Respondent: Steven McFarland	Termination
33.	PR-2855-24 3-12-24	Parties working on settlement. IFU 6-6-24	BMNVT Motors LLC dba Serramonte Ford, a Delaware limited liability company v. Ford Motor Company, a Delaware corporation	Protestant: Victor P. Danhi, Franjo M. Dolenac  Respondent:	Relocation

# PETITIONS

CASE NUMBER/ DATE FILED	STATUS	PETITION NAME	COUNSEL
P-463-22 6-20-22	<p>Petitioner's relief granted pursuant to Section 3050(b)(1)</p> <p>Referred to DMV Investigations</p> <p>Request for extension to conduct investigation and submit report pending consideration granted until January 31, 2024</p> <p>DMV's [Corrected] Report of Investigation is being presented at the April 25, 2024, General Meeting</p>	<p>Courtesy Automotive Group, Inc., dba Courtesy Subaru of Chico v. Subaru of America, Inc.</p>	<p>Petitioner: Gavin M. Hughes, Robert A. Mayville, Jr.</p> <p>Respondent: Lisa M. Gibson, Amy M. Toboco</p>

# **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).**

No judicial matters are pending.

# NOTICES FILED

PURSUANT TO VEHICLE CODE SECTIONS  
3060/3070 AND 3062/3072

NOVEMBER 21, 2023, THROUGH APRIL 8, 2024

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)	9
Honda/Acura	
Hyundai/Genesis	6
Kia	
Nissan/Infiniti	
Stellantis (Chrysler, Jeep, Dodge, RAM,)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	1
Toyota/Lexus	
Volkswagen/Audi	
Miscellaneous Car	4
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	6
<b>Total</b>	<b>26</b>



## SECTIONS 3062/3072

Manufacturer	Number of Notices
BMW	
Ford	3
GM (Buick, Cadillac, Chevrolet, GMC)	
Honda/Acura	1
Hyundai/Genesis	3
Kia	
Nissan/Infiniti	
Stellantis (Chrysler, Jeep, Dodge, RAM)	
Stellantis (Alfa Romeo, FIAT)	
Stellantis (Maserati)	
Subaru	
Toyota/Lexus	
Volkswagen/Audi	
Miscellaneous Car	
Miscellaneous Motorcycles	
Miscellaneous Recreational Vehicle	
<b>Total</b>	<b>7</b>



## Memorandum

Date : **APRIL 11, 2024**  
To : **ALL BOARD MEMBERS**  
From : **TIMOTHY M. CORCORAN**  
Subject : **BOARD MEETING DATES**

The following identify planned Board meeting dates:

- April 25, 2024, General Meeting, Sacramento.
- June 19 - July 2, 2024, Special Meeting to consider a Proposed Decision (location to be determined)
- August 5-20, 2024, Special Meeting to consider a Proposed Decision (location to be determined)
- Industry Roundtable (date/location to be determined)
- Fall 2024, General Meeting (date/location to be determined)

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