

PROPOSED REGULATIONS: SUBSTANTIVE

§ 550. Definitions.

For the purposes of these regulations:

(a) “Administrative law judge” or “ALJ” means an administrative law judge of the board or Office of Administrative Hearings.

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

(c) “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 preemptory 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 purposes of Vehicle Code section 3085, an association, which is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers, is a protestant.

(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(a), Vehicle Code. Reference: Sections 1504, 3050, 3050.7, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, and 3076, and 3085, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

§ 551.8. Dismissals of Petitions and Protests.

(a) The board may, at its discretion, dismiss a petition for good cause shown. Good cause may include, but shall not be limited to, failure by the petitioner to comply with any of the following sections of Article 2: 554, 555, 556.

(b) The board may, at its discretion, dismiss a protest for good cause shown. Good cause may include, but shall not be limited to, failure by the protestant to comply with any of the following sections of Article 5: 583, 585, 586, 589.

(c) The board may, at its discretion, dismiss a petition or a protest, if additional information requested by the board is not supplied within the time specified by the board.

(d) An order of dismissal of a petition or a protest shall be a final order pursuant to Vehicle Code sections 3067, ~~and 3081~~, and 3085.4 and no reconsideration or rehearing shall be permitted.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050, 3066 and 3080, and 3085.2, Vehicle Code; *Automotive Management Group Inc. [Santa Cruz*

Mitsubishi v. New Motor Vehicle Board; Real Party in Interest, Mitsubishi Motor Sales of America, Inc. (1993) 20 Cal.App.4th 1002; 24 Cal.Rptr.2d 904; *Duarte & Witting, Inc. v. New Motor Vehicle Board, Defendant and Respondent; DaimlerChrysler Motors Corp., Real Party in Interest and Respondent* (2002), 104 Cal.App.4th 626; 128 Cal.Rptr.2d 501.

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

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

(b) Each party, excluding an intervenor, is entitled to one peremptory challenge of the administrative law judge assigned to preside over the hearing on the merits of a petition as required by Vehicle Code section 3050~~(e)~~(b) or the administrative law judge assigned to preside over the hearing on the merits of a protest as required by subdivisions (c) and (d) of Vehicle Code section 3050, based solely upon satisfying all of the following requirements:

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

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

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

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

(d) No peremptory challenge shall be considered or granted if it is not made within the time limits set forth above.

(e) A peremptory challenge of the assigned administrative law judge is not authorized for law and motion hearings, settlement conferences, and rulings on discovery disputes.

(f) Unless required for the convenience of the board or good cause is shown, a continuance of the merits hearing shall not be granted by reason of a peremptory challenge. Nothing in this regulation shall affect or limit the provisions of Vehicle Code section 3066(a), ~~and 3080(a)~~, or 3085.2(a).

(g) Nothing in this regulation shall affect or limit the provisions of a challenge for cause under Article 1, section 551.1.

Note: Authority cited: Sections 3050, 3066, ~~and 3080~~ and 3085.2, Vehicle Code. Reference: Section 3050(a), Vehicle Code; and Section 11425.40, Government Code.

§ 553.40. Filing Fees.

A party filing a request for informal mediation, petition, or protest pursuant to the provisions of this chapter shall simultaneously deliver to the board a filing fee of \$200, which is to be in the form of a check or money order payable directly to the board, or a credit card payment. The initial pleading filed in response to such request for informal mediation, petition, or protest shall also be accompanied by a \$200 filing fee. The board, in the discretion of the executive director, may refuse to accept for filing any pleading subject to this section that is not accompanied by the requisite fee. The executive director may, upon showing of good cause, waive any such fee.

Note: Authority cited: Section 3016, 3050(a) and 3050.5, Vehicle Code; and Section 6163, Government Code. Reference: Sections 3050, 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, ~~and 3076~~, and 3085, Vehicle Code.

§ 558. Answer-Time of Filing; Form and Content.

(a) The respondent shall file with the executive director of the board a written answer to the petition, in the form prescribed by Article 6 herein. The answer shall be filed within 30 days of the date of service of the petition on the respondent.

(b) The answer shall be responsive to the allegations of the petition and shall set forth in clear and concise language the factual contentions of the respondent with respect to the matter referred to in the petition.

(c) By declaration, ~~t~~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.

(d) The respondent shall set forth in the answer its mailing address and telephone number and the name, mailing address and telephone number of its attorney or authorized agent, if any. All correspondence with respondent and notices to respondent shall thereafter be addressed to said address, if it appears in person, or to the address of its attorney or agent, if it is represented by an attorney or agent. Respondent shall promptly give the executive director and petitioner written notice by mail of all subsequent changes of address or telephone number.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050(~~e~~), Vehicle Code.

§ 586. Filing of Protest, Schedules of Compensation for Preparation and Delivery Obligations, Warranty Reimbursement Schedules ~~or Formulas~~, Retail Labor Rate, Retail Parts Rate and Franchisor Incentive Program Reimbursement Pursuant to Vehicle Code Sections 3064, 3065, 3065.1, 3065.4, 3074, 3075, and 3076.

(a) Protests filed with the board under any of these sections of the Vehicle Code shall be filed as follows:

(1) The protest shall set forth in clear and concise language the factual contentions of the franchisee with respect to the protest.

(2) The franchisee may submit, as exhibits to the protest, photographic, documentary or similar physical evidence relevant to the matter in support of the protest with an appropriate description thereof in the protest sufficient to identify them and to explain their relevancy.

(3) The franchisee shall set forth in the protest its mailing address and telephone number and the name, mailing address and telephone number of the franchisee's attorney or authorized agent, if any. All correspondence with the franchisee and notices to the franchisee shall thereafter be addressed to said address, if it represents itself, or to the address of its attorney or agent, if it is represented by an attorney or agent.

(4) The franchisee shall indicate either that it does or does not desire to appear before the board.

(b) Schedules of compensation for preparation and delivery obligations and warranty reimbursement schedules ~~or formulas~~ shall be filed by the franchisor 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 schedules ~~or formulas~~ have previously been filed with the board.

(c) The franchisor shall file with the board any addition, deletion, change or modification to the schedules of compensation or reimbursement schedules or formulas on file with the board on or before the date such addition, deletion, change or modification becomes effective.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(~~a~~) and (~~d~~), 3064, 3065, 3065.1, 3065.4, 3074, 3075, and 3076, Vehicle Code.

§ 590. Hearings by Board or by Administrative Law Judge.

All hearings on protests filed pursuant to Sections 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3070, 3072, 3074, 3075, ~~or 3076, or 3085~~ may be considered by the entire board or may, at its discretion, be conducted by an administrative law judge designated by the board who shall either be a member of the board, an administrative law judge on the staff of the Office of Administrative Hearings, or any person specifically designated by the board.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050(~~a~~) and (~~d~~), 3060, 3062, 3064, 3065, 3065.1, 3065.3, 3065.4, 3066, 3070, 3072, 3074, 3075, 3076, and 3080, 3085 and 3085.2, Vehicle Code.