State of California
Office of Administrative Law

In re: **New Motor Vehicle Board**	**DECISION OF DISAPPROVAL OF REGULATORY ACTION**
Regulatory Action: **Title 13, California Code of Regulations**	**Government Code Section 11349.3**
Amend section: 550	**OAL Matter Number: 2025-0124-03**
	OAL Matter Type: Regular (S)

SUMMARY OF REGULATORY ACTION

This regulatory action by the New Motor Vehicle Board (Board) proposed to amend section 550 of title 13 of the California Code of Regulations (CCR) to state that "[f]or 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."

On January 24, 2025, the Board submitted the above-referenced regulatory action to the Office of Administrative Law (OAL) for review. On March 10, 2025, OAL notified the Board that OAL disapproved the proposed regulatory action pursuant to the Administrative Procedure Act (APA). This Decision of Disapproval of Regulatory Action explains the reasons for OAL's action.

DECISION

OAL disapproved the action for failure to comply with the consistency standard of Government Code section 11349.1, subdivision (a)(4), and for incorrect procedure.

DISCUSSION

The Board's regulatory action must satisfy requirements established by the part of the APA that governs rulemaking by a state agency. Any regulation adopted, amended, or repealed by a state agency to implement, interpret, or make

specific the law enforced or administered by it, or to govern its procedure, is subject to the APA unless a statute expressly exempts the regulation from APA coverage. (Gov. Code, sec. 11346.) No exemption applies to the present regulatory action under review.

Before any regulation subject to the APA may become effective, the regulation is reviewed by OAL for compliance with the standards for administrative regulations in Government Code section 11349.1 and the procedural requirements of the APA. Generally, to satisfy the APA standards, a regulation must be legally valid, supported by an adequate record, and easy to understand. In this review, OAL is limited to the rulemaking record and may not substitute its judgment for that of the rulemaking agency regarding the substantive content of the regulation. This review is an independent check on the exercise of rulemaking powers by executive branch agencies intended to improve the quality of regulations that implement, interpret, and make specific statutory law, and to ensure that the public is provided with a meaningful opportunity to comment on regulations before they become effective.

1. Consistency Standard

The APA requires proposed regulations to be consistent with other laws. (Gov. Code, sec. 11349.1, subd. (a)(4).) "Consistency" is defined as "being in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law." (Gov. Code, sec. 11349, subd. (d).) Government Code section 11342.2 also provides the following regarding consistency:

> Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

In this action, the Board proposed to amend section 550 of title 13 of the CCR as underlined below:

> (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**. (Emphasis added.)

Vehicle Code section 3067(b) reads as follows:

> (b) **Notwithstanding subdivision (c) of Section 11517 of the Government Code, if a protest is heard by an administrative law judge alone,** 10 days after receipt by the board of the administrative law judge's proposed decision, a copy of the proposed decision shall be filed by the board as a public record and a copy shall be served by the board on each party and his or her attorney. (Emphasis added.)

The language of Vehicle Code sections 3081(b), and 3085.4(b) is substantively identical to that of Vehicle Code section 3067(b).[1]

Government Code section 11517 provides in pertinent part:

> (a) A contested case may be originally **heard by the agency itself**, and subdivision (b) shall apply. **Alternatively,** at the discretion of the agency, **an administrative law judge may originally hear the case alone and subdivision (c) shall apply**. (Emphasis added.)
>
> (b) If a contested case is originally heard before an agency itself, all of the following provisions apply:
>
> (1) An administrative law judge shall be present during the consideration of the case and, if requested, shall assist and advise the agency in the conduct of the hearing.
> […]
>
> (c)(1) If a contested case is originally **heard by an administrative law judge alone,** he or she shall prepare within 30 days after the case is submitted to him or her a proposed decision in a form that may be adopted by the agency as the final decision in the case. […] Thirty days after the receipt by the agency of the proposed decision, a copy of the proposed decision shall be filed by the agency as a public record and a copy shall be served by the agency on each party and his or her attorney. […] (Emphasis added.)

As explained in the Board's Initial Statement of Reasons (ISOR), the Board uses either an in-house administrative law judge (ALJ) or an Office of Administrative

[1] There is only one nonsubstantive grammatical difference between the language of Vehicle Code sections 3067(b), 3081(b) and 3085.4(b). Specifically, while Vehicle Code sections 3067(b) and 3081(b) state that the "board shall serve each party and **his or her** attorney," Vehicle Code section 3085.4(b) states that the "board shall serve each part and the **party's** attorney." (Emphasis added.)

Hearings (OAH) ALJ to hear Vehicle Code section 3067(b), 3081(b) and 3085.4(b) protest cases. When an OAH ALJ hears a case, the Board does not assist the OAH ALJs, but rather the OAH ALJ **hears the case alone**. The proposed amendment to section 550 would differentiate in-house ALJs from OAH ALJs for purposes of Vehicle Code section 3067(b), 3081(b) and 3085.4(b) protests. This differentiation would affect the period of time the Board has to file and serve proposed ALJ decisions heard by OAH ALJs. As the Board states on page two of the ISOR:

> The proposed amendment will result in the APA applying to OAH proposed decisions, which will provide the Board's legal staff 30 days to review the proposed decision before filing it as a public record and serving each party and their counsel [as opposed to Vehicle Code sections 3067(b), 3082(b) and 3085.4(b) which provide for only 10 days].

As set forth above, Government Code section 11517 distinguishes cases "heard by the agency itself" as set forth in subdivision (b), from cases "heard by an administrative law judge alone" as set forth in subdivision (c). For cases heard by an administrative law judge alone, Government Code section 11517(c) imposes a 30-day deadline for an agency to file a copy of the proposed decision as a public record and serve the proposed decision on each party. Vehicle Code sections 3067(b), 3081(b), and 3085.4(b) each provide that "[n]otwithstanding subdivision (c) of Section 11517 of the Government Code" an agency shall instead have ten days to file and serve the proposed decision. By including the language "[n]otwithstanding subdivision (c) of Section 11517 of the Government Code," it is clear that Legislature intended for Vehicle Code sections 3067(b), 3081(b), and 3085.4(b) to preclude the application of the 30-day deadline in Government Code section 11517(c) and instead impose a ten-day deadline on cases "heard by an administrative law judge alone." Contrary to this statutory requirement, the proposed amendment to section 550 would exclude those hearings heard by an "administrative law judge alone" from the ten-day deadline in Vehicle Code sections 3067(b), 3081(b) and 3085.4(b), and instead would only apply the ten-day deadline to hearings heard by the Board itself. Therefore, the proposed amendment is inconsistent with Vehicle Code sections 3067(b), 3081(b) and 3085.4(b) in violation of Government Code section 11349(d).

2. <u>Incorrect Procedure</u>

The APA and OAL's regulations in title 1 of the CCR require agencies to follow specific procedures when conducting a regulatory action. In this action, the Board did not comply with Government Code section 11347.3, subdivision (b)(2), which states the rulemaking file shall include "all published notices of proposed adoption, amendment, or repeal of the regulation…." The Board published a

Notice of Proposed Action in the Notice Register on December 6, 2024, but the rulemaking record does not include a copy of that notice.

CONCLUSION

For the foregoing reasons, OAL disapproved the above-referenced regulatory action. Pursuant to Government Code section 11349.4, subdivision (a), the Board may resubmit revised regulations within 120 days of its receipt of this Decision of Disapproval of Regulatory Action. A copy of this Decision will be emailed to the Board on the date indicated below.

If the Board makes further substantive regulatory text changes, which are sufficiently related to the originally noticed text, the Board must make them available for public comment for at least 15 days pursuant to subdivision (c) of Government Code section 11346.8 and section 44 of title 1 of the CCR. Any comments containing objections or recommendations must be summarized and responded to in the Final Statement of Reasons. The Board must resolve all other issues raised in this Decision of Disapproval of Regulatory Action prior to OAL approving a resubmittal.

Date: March 17, 2025

_____/s/_____
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