STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GENERAL MOTORS CORPORATION, Petitioner, and MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC; and HYUNDAI MOTOR AMERICA, Intervenors, vs. FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent, vs. FLORIDA AUTOMOBILE DEALERS ASSOCIATION and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION, Intervenors.	)	CASE NO. 91-2591RP
FLORIDA AUTOMOBILE DEALERS ASSOCIATION and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION, Petitioners, vs. FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, Respondent, vs.	)	CASE NO. 91-2821R

GENERAL MOTORS CORPORATION; MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC; and HYUNDAI MOTOR AMERICA,

Intervenors.

FLORIDA AUTOMOBILE DEALERS ASSOCIATION and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION,

Petitioners,

vs.

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Respondent,

vs.

GENERAL MOTORS CORPORATION; MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC; and HYUNDAI MOTOR AMERICA,

Intervenors.

CASE NO. 91-2822R

GENERAL MOTORS CORPORATION,

Petitioner,

and

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC; HYUNDAI MOTOR AMERICA; and ED MORSE CHEVROLET OF SEMINOLE, INC.

Intervenors,

vs.

FLORIDA DEPARTMENT OF HIGHWAY

CASE NO. 91-2899R

SAFETY AND MOTOR VEHICLES,

Respondent,

and

FLORIDA AUTOMOBILE DEALERS ASSOCIATION and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION,

Intervenors.

GENERAL MOTORS CORPORATION,

Petitioner,

and

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC; HYUNDAI MOTOR AMERICA; and ED MORSE CHEVROLET OF SEMINOLE, INC.,

Intervenors,

vs.

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

Respondent,

vs.

FLORIDA AUTOMOBILE DEALERS ASSOCIATION and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION,

Intervenors.

CASE NO. 91-2901R

MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC; and HYUNDAI MOTOR AMERICA;

Petitioners,

vs.

CASE NO. 91-2902R

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES,

)
Respondent,)
and)
)
FLORIDA AUTOMOBILE DEALERS)
ASSOCIATION and SOUTH FLORIDA)
AUTO TRUCK DEALERS ASSOCIATION,)
)
Intervenors.)
_____)

FINAL ORDER

Pursuant to written Notice, the Division of Administrative Hearings, by its duly designated Hearing Officer, Daniel Manry, held a formal hearing in the above-styled case on May 29, 1991, in Tallahassee, Florida.

APPEARANCES

FOR GENERAL MOTORS; MOTOR VEHICLE MANUFACTURERS ASSOCIATION OF THE UNITED STATES, INC.; FORD MOTOR COMPANY; ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS; and HYUNDAI MOTOR AMERICA	Dean Bunch, Esquire Rumberger, Kirk, Caldwell, Cabaniss, Burke & Wechsler 106 East College Avenue Suite 700 Tallahassee, Florida 32301
FOR FLORIDA AUTOMOBILE DEALERS ASSOCIATION SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION	Daniel E. Myers, Esquire and Myers & Forehand 402 N. Office Plaza Drive Tallahassee, Florida 32301
FOR FLORIDA AUTOMOBILE DEALERS ASSOCIATION	William C. Owen, Esquire Loula M. Fuller, Esquire Carlton, Fields, Ward, Emmanuel, Smith & Cutler 410 First Florida Bank Bldg. Tallahassee, Florida 32301
FOR SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION	James D. Adams, Esquire Feaman, Adams and Fernandez 4700 N.W. 2nd Avenue Suite 400 Tallahassee, Florida 33431
FOR ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS, INC.	Charles H. Lockwood, II, Esq. Association of International Automobile Manufacturers 1001 19th Street North Suite 1200 Rosslyn, Virginia 22209

FOR ED MORSE CHEVROLET OF SEMINOLE, INC.	Linda J. McNamara, Esquire Glenn, Rasmussen, Fogarty, Merryday & Russo 100 South Ashley Drive Suite 1300 Tampa, Florida 33601
FOR DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES	Michael J. Alderman, Esquire Mr. Neil C. Chamelin Department of Highway Safety and Motor Vehicles Neil Kirkman Building, A-432 Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue for determination in this proceeding is whether Proposed Rules 15C-7.004(4)(a), (4)(b), and (7)(d) and Florida Administrative Code Rule 15C-1.008 each constitute an invalid exercise of delegated legislative authority.

PRELIMINARY STATEMENT

Proposed Rule 15C-7.004 was published in the Florida Administrative Weekly on April 19, 1991. Petitioner, General Motors Corporation ("GM"), filed a petition challenging Proposed Rule 15C-7.004(a) with the Division of Administrative Hearings on April 25, 1991 (Case No. 91-2591RP). GM filed challenges to Proposed Rule 15C-7.004(7)(d)(Case No. 91-2901R) and Florida Administrative Code Rule 15C-1.008 on May 10, 1991 (Case No. 2899R)

Petitioners Florida Automobile Dealers Association ("FADA") and South Florida Auto Truck Dealers Association ("SFATDA") filed petitions challenging Proposed Rules 15C- 7.004(4)(a) and (7)(d) on May 8, 1991 (Case Nos. 91-2821R and 91- 2822R, respectively). A petition challenging Proposed Rule 15C-7.004(4)(b) was filed on May 10, 1991, by Petitioners, Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA"), Ford Motor Company ("Ford"), Association of International Automobile Manufacturers, Inc. ("AIAM"), and Hyundai Motor America ("Hyundai")(Case NO. 91-2902R).

Ed Morse Chevrolet of Seminole, Inc., petitioned to intervene in GM's challenges to Florida Administrative Code Rule 15C-1.008 and Proposed Rule 15C-7.004(7)(d)(Case Nos. 91-2899R and 91-2901R, respectively). Petitioners in each rule challenge also petitioned to intervene in each of the related rule challenge proceedings. All of the petitions to intervene were granted and the separate rule challenges were consolidated pursuant to the stipulation of the parties and the order of the undersigned. 1/

There are no disputed issues of material fact in this proceeding. The parties filed a prehearing stipulation with the undersigned on May 23, 1991.

The prehearing stipulation was supplemented by additional stipulations entered into by the parties on the record during the formal hearing. Facts concerning the identity and standing of Morse appear in its Petition to Intervene. The Petition to Intervene and the representations of fact contained therein were also stipulated to by the parties. Since there were no disputed issues of material fact, no evidentiary hearing was held. The formal hearing was limited to oral argument.

At the formal hearing, Florida Automobile Dealers Association ("FADA") Exhibit 1 was identified as a report entitled A Review of Sections 320.27-320.31, and 320.642, Florida Statutes, as prepared by the Staff of the Senate Committee on Transportation. FADA's Exhibit 1 was submitted for admission in evidence. General Motors ("GM") objected to the use of the document, which pertained to Rule 15C-1.008. Ruling on the admissibility of FADA's Exhibit 1 was reserved for disposition in this Final Order. GM's objection to the admissibility of FADA's Exhibit 1 is sustained. Contrary to the assertion of FADA, the stipulation of the parties is not limited to issues of standing.

A transcript of the record of the formal hearing was filed with the undersigned on June 6, 1991. Proposed Final Orders were timely filed by the parties on June 7, 1991, and supplemented on June 10, 1991.

FINDINGS OF FACT

The Parties

1. The Department of Highway Safety and Motor Vehicles (the "Department") is the agency responsible for promulgating and administering the rules challenged in this proceeding. The Department administers Chapter 320, Florida Statutes, 2/ which governs the operation of motor vehicle dealers and manufacturers in Florida.

2. General Motors Corporation ("GM") is a corporation incorporated in Delaware and registered to do business in Florida. GM's corporate address and principal place of business is 3044 West Grand Boulevard, Detroit, Michigan 48202.

3. GM is licensed by the Department, pursuant to Section 320.60, Florida Statutes, as a manufacturer of motor vehicles. GM has entered into and will enter into dealer sales and service agreements to authorize motor vehicle dealers to sell GM vehicles at locations in Florida.

4. The Florida Automobile Dealers Association (??FADA??) and the South Florida Auto Truck Dealers Association ("SFATDA") are trade associations composed of both domestic and foreign line-make franchised motor vehicle dealers. FADA is composed of more than 800 franchised motor vehicle dealers licensed in the state. SFATDA is composed of virtually all franchised motor vehicle dealers in Palm Beach, Broward, Dade, and Monroe Counties.

5. The Motor Vehicle Manufacturers Association of the United States, Inc. ("MVMA") is a trade association whose member companies manufacture motor vehicles produced in the United States. MVMA members include Chrysler Corporation, Ford Motor Company, GM, Honda of America MFG., Inc., Navistar International Transportation Corporation, PACCAR Inc., and Volvo North America Corporation. The principal place of business for MVMA is 7430 Second Avenue, Suite 300, Detroit, Michigan 48202. All of the members of MVVA, including Ford Motor Company ("Ford"), are licensed pursuant to Section 320.61, Florida Statutes.

6. The Association of International Automobile Manufacturers, Inc. ("AIAM") is a trade association of manufacturers and manufacturer-authorized importers which import motor vehicles for sale in the United States. AIAM members and associates affected by the challenged rules include:

American Honda Motor Company, Inc.; America Suzuki Motor Corporation; BMW of North America, Inc.; Daihatsu America, Inc.; Fiat Auto U.S.A., Inc.; Hyundai Motor America; Isuzu Motors America, Inc.; Jaguar Cars, Inc.; Mazda Motor of America, Inc., Mitsubishi Motor Sales of America, Inc.; Nissan North America, Inc.; Peugeot Motors of America, Inc.; Porsche Cars North America, Inc., Rolls-Royce Motor Cars, Inc.; Rover Group USA, Inc.; Saab Cars, USA, Inc.; Subaru of America, Inc.; Toyota Motor Sales, U.S.A., Inc.; Volkswagen of America, Inc., Volvo North America Corporation; and Yugo America, Inc.

The principal place of business for AIAM is 1001 19th Street North, Suite 1002, Arlington, Virginia 22209.

7. Each member of AIAM is either licensed as an importer, pursuant to Section 320.61, Florida Statutes, or maintains a contractual relationship with a distributor which is licensed pursuant to Section 320.61. Toyota Motor Sales, U.S.A., Inc. ("Toyota"), for example, is not licensed in the state as an importer. Toyota, however, maintains a contractual relationship with Southeast Toyota, Inc., which is licensed as a distributor for the purpose of marketing motor vehicles in Florida.

8. Hyundai Motor America ("Hyundai") is an importer of motor vehicles. Hyundai's principal place of business is 10550 Talbert Avenue, Fountain Valley, California 92728.

9. Members of MVMA and AIAM, as well as Ford and Hyundai, have entered into and will continue to enter into dealer sales and service agreements to authorize motor vehicle dealers to sell GM vehicles at locations in Florida.

10. Ed Morse Chevrolet of Seminole, Inc. ("Morse") is an applicant for a license as a franchised motor vehicle dealer. The application of Morse was approved after a hearing pursuant to Section 320.642, Florida Statues. Morse's facility, however, is not yet completed and it would be adversely affected by the enforcement of Proposed Rules 15C-7.004(7)(d) and Rule 15C-1.008.

11. The portions of the proposed and existing rules challenged in this proceeding will affect the substantial interests of the parties to this proceeding.

The Challenged Rules

12. Proposed Rule 15C-7.004 was published in the Florida Administrative Weekly, Vol. 17, NO. 16, at page 1721, on April 19, 1991 (the "Proposed Rule"). The particular portions of the Proposed Rule challenged in this proceeding are hereinafter identified by the underlining in the quoted portion of the Proposed Rule.

13. Proposed Rule 15C-7.004(4)(a) provides:

> (4) Application for Reopening or Successor Dealership, or for Relocation of Existing Dealership.
> (a) If the license of an existing franchised motor vehicle dealer is revoked for any reason, or surrendered, an application for a license to permit the reopening of the same dealer or a successor dealer within twelve months of the license revocation or surrender shall not be considered the establishment of an additional dealership if one of the conditions set forth in Section 320.642(5) is met by the proposed dealer. (emphasis added)

14. Proposed Rule 15C-7.004(4)(b) provides:

> (4) Application for Reopening or Successor Dealership, or for Relocation of Existing Dealership.
> (b) An application for change of address by an existing dealer under this section shall be filed on form HSMV 84712, Application For Change of Location (Address) Of Dealer In Motor Vehicles, Mobile Homes or Recreational Vehicles, which is hereby adopted by reference, provided by the Department. The dealer shall indicate which provision of Section 320.642(5) Florida Statutes, if any, it contends exempts the proposed location from consideration as an additional dealership. (emphasis added)

15. Proposed Rule 15C-7.004(7)(d) provides:

> (7) Hearing and Post-Hearing Procedures.
> (d) If the proposed additional or relocated dealership is approved construction on the dealership shall begin within 12 months of the date of the final order. The applicant must complete construction and finalize its preliminary application for license within twenty-four months of the date of the final order. This period may be extended by the Department for good cause. (emphasis added)

16. Florida Administrative Code Rule 15C-1.008 provides:

> Any person who contemplates the establishment of a motor vehicle business for the purpose of selling new motor vehicles, for which a franchise from the manufacturer, distributor or importer thereof is required, shall, in advance of acquiring building and facilities necessary for such an establishment, notify the Director of the

> Division of Motor Vehicles of his intention to establish such motor vehicle business. Such notice shall be in the form of a preliminary filing of his application for license and shall be accompanied by a copy of any proposed franchise agreement with, or letter of intent to grant a franchise from, the manufacturer, distributor or importer, showing the make of vehicle or vehicles included in the franchise; location of the proposed business; the name or names of any other dealer or dealers in the surrounding trade areas, community or territory who are presently franchised to sell the same make or makes of motor vehicles.
>
> Upon receipt of such notice the Director shall be authorized to proceed with making the determination required by Section 320.642, Florida Statutes, and shall cause a notice to be sent to the presently licensed franchised dealers for the same make or makes of vehicles in the territory or community in which the new dealership proposes to locate, advising such dealers of the provisions of Section 320.642, Florida Statutes, and giving them and all real parties in interest an opportunity to be heard on the matters specified in that Section. Such notice need not be given to any presently licensed notice dealer who has stated in writing that he will not protest the establishment of a new dealership which will deal in the make or makes of vehicles to be included in the proposed franchise in the territory or community in which the new dealership proposes to locate. Any such statements or letters of no protest shall have been issued not more than three months before the date of filing of the preliminary application. The Director may make such further investigation and hold such hearing as he deems necessary to determine the questions specified under Section 320.642. A determination so made by the Director shall be effective as to such license for a period of twelve (12) months from the date of the Director's Order, or date of final judicial determination in the event of an appeal, unless for good cause a different period is set by the Director in his order of determination. (emphasis added)

17. Rulemaking authority for Proposed Rule 15C-7.004 is found in Sections 320.011 and 320.27(3), Florida Statues. The law implemented by the proposed rule is found in Sections 320.27 and 320.60-320.70. Rulemaking authority for Florida Administrative Code Rule 15C-1.008 is found in Sections 320.011, 320.27(3), and 320.69. The law implemented by the existing rule is found in Sections 320.27 and 320.642.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter in this proceeding. Sections 120.54 and 120.56, Florida Statutes. 3/ The parties were duly noticed for the formal hearing.

19. The party challenging a proposed or existing rule has the burden of proof. Florida League of Cities, Inc. v. Department of Insurance and Treasurer, 540 So.2d 850, 857 (Fla. 1st DCA 1989); Grove Isle, Ltd. v. Department of Environmental Regulation, 454 So.2d 571, 573 (Fla. 1st DCA 1984).

> The party challenging the validity of an agency rule must show that the agency adopting the rule has exceeded its authority, that the requirements of the rule are not appropriate to the ends specified in the legislative act, and that the requirements contained in the rule are not reasonably related to the purpose of the enabling legislation but are arbitrary and capricious.

Grove Isle, Ltd., 454 So.2d at 573.

20. The parties have challenged the proposed and existing rules in this proceeding on the grounds that each challenged rule is an invalid exercise of delegated legislative authority. A proposed or existing rule is an invalid exercise of delegated legislative authority under Section 120.52(8), Florida Statutes, if one or more of the following apply:

> (a) The agency has materially failed to follow the applicable rulemaking procedures set forth in S. 120.54;
> (b) The agency has exceeded its grant of rulemaking authority, citation to which is required by S. 120.54(7);
> (c) The rule enlarges, modifies, or contravenes the specific provisions of law implemented, citation to which is required by S. 120.54(7); or
> (d) The rule is arbitrary or capricious.

21. An agency's interpretation of a statute, as evidenced by a challenged rule, does not have to be the only possible interpretation. Florida League of Cities, 540 So.2d at 857. Any interpretation that reasonably effectuates the legislative intent for the statute is permissible. Id. The agency's interpretation must be clearly erroneous in order to sustain the rule challenge. Id. The challenged rules should be sustained as long as they are reasonably related to the purposes of the enabling legislation, and are not arbitrary or capricious. Grove Isle, Ltd, 454 So.2d at 573.

22. The statutory framework applicable to this proceeding is contained in Chapter 320, Florida Statutes, and particularly Sections 320.61-320.70. Legislative intent for the applicable statutory framework is:

> . . . to protect the public health, safety, and welfare of the citizens of the state by

> regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers. Section 320.605.

23. Chapter 320, Florida Statutes, creates a complex relationship between manufacturers and dealers. The issues in this proceeding must be determined in a manner that gives purpose and effect to each of the various provisions in Chapter 320, including Sections 320.61-320.70 and effectuates legislative intent. D.B. v. State, 544 So.2d 1108, 1109-1110 (Fla. 1st DCA 1989); State v. Zimmerman, 370 So.2d 1179 (Fla. 4th DCA 1979); Forehand v. Board of Public Instruction of Duval County, 166 So.2d 668, 672 (Fla. 1st DCA 1964).

Proposed Rule 15C-7.004(4)(a)

24. Section 320.642, Florida Statutes, authorizes existing franchised motor vehicle dealers to protest the establishment of an additional motor vehicle dealership or the relocation of an existing dealer by a manufacturer within a community where the same line-make vehicle is represented. Section 320.642(5) creates an exemption from the protest procedures and criteria otherwise authorized in Section 320.642 by providing that:

> The opening or reopening of the same or a successor motor vehicle dealer within twelve months shall not be considered an additional motor vehicle dealer subject to protest . Any other such opening or reopening shall constitute an additional motor vehicle dealer within the meaning of this section. 4/

25. The terms "opening" and "reopening" are not defined in Section 320.642(5), Florida Statutes. Similarly, the event that begins the 12 month period of exemption from protest is not prescribed in Sections 320.60-320.70.

26. The "opening" or "reopening" of the same or successor dealer implicitly requires the prior closing of the same or predecessor dealer. The parties stipulated on the record during the formal hearing that the same or predecessor dealer is closed for purposes of Section 320.642(5), Florida Statutes, if:

> (a) the dealership actually closes under circumstances that are tantamount to abandonment within the meaning of Section 320.641(4); 5/
> (b) the dealer's license is revoked by the Department in a proceeding brought pursuant to Section 320.27, or the dealer otherwise surrenders its license;
> (c) the dealer's license expires without renewal;
> (d) the dealer's license is transferred in connection with a buy-sell agreement and the relocation of the dealership; or
> (e) the franchise agreement between the dealer and the manufacturer is terminated by

the manufacturer pursuant to Section 320.641.

27. Proposed Rule 15C-7.004(4)(a) begins the 12 month period of exemption from the date that the dealer's license is either revoked or surrendered. FADA and SFATDA assert that the 12 month period of exemption from protest should begin from the date that the dealership closes under circumstances that are tantamount to abandonment within the meaning of Section 320.641(4), Florida Statutes. GM and the remaining parties assert that the 12 month period of exemption from protest should begin from the date that a dealer's franchise agreement with the manufacturer is cancelled pursuant to Section 320.641.

28. Revocation or surrender of the same or predecessor dealer's license eventually occurs in each event of closing stipulated to by the parties for purposes of Section 320.642(5), Florida Statutes. In practice, the revocation or surrender almost always occurs subsequent to other events such as abandonment, execution of a buy-sell agreement, and cancellation of a franchise agreement. The Department can not assure itself of information sufficient to determine when the 12 month period of exemption from protest begins if the 12 month period of exemption from protest begins upon abandonment or execution of a buy-sell agreement. 6/

29. The Department is statutorily charged with responsibility for administering Chapter 320, including the regulation of licenses pursuant to Section 320.27, the protest procedures in Section 320.642, and the exemption from protest in Section 320.642(5). The revocation or surrender of a dealer's license is the only event of closing in which the agency charged with responsibility for administering Sections 320.27, 320.642, and 320.642(5) has unilateral access to information sufficient to determine the date for beginning the 12 month exemption from protest.

30. Proposed Rule 15C-7.004(4)(a) does not preclude a manufacturer from claiming the benefit of the statutory exemption in Section 320.642(5), Florida Statutes, for the purpose of "reopening . . . the same . . . dealer." Since the license for the same dealer would have been revoked or surrendered, the manufacturer could not reopen the same dealer in any event. Any other "closing" of the same dealer would not begin the 12 month period of exemption from protest. In the event of such a "closing", the manufacturer would be free to "reopen" the same dealer at any time. The adverse affect on the statutory exemption in Section 320.642(5), if any, is limited to the exemption for "opening . . . a successor . . . dealer

31. Section 320.641, Florida Statutes, prescribes procedures for the cancellation of dealer franchise agreements by manufacturers. Section 320.641(7) prohibits a manufacturer from naming a "replacement" dealer prior to the final adjudication by the Department in the franchise cancellation proceeding. 7/

32. Section 320.641(7), Florida Statutes, does not have the effect of precluding GM from availing itself of the 12 month period of exemption from protest otherwise available in Section 320.642(5) if the license revocation or surrender occurs after a final adjudication is entered in the franchise cancellation proceeding. Section 320.641(7) would preclude GM from availing itself of the 12 month period of exemption from protest if the license revocation or surrender precedes the franchise cancellation by more than 12 months.

33. GM asserts that the revocation or surrender of a dealer's license more than 12 months prior to the cancellation of the franchise effectively precludes the manufacturer from claiming the benefit of the exemption from protest and thereby denies GM a "clear point of entry" or otherwise deprives GM of its rights without due process. GM claims that a license revocation proceeding or license surrender is conducted between the Department and the dealer pursuant to Section 320.27, Florida Statutes. GM has no statutory right to notice of the revocation or surrender and has no right to be notified of when the 12 month period of exemption from protest in Section 320.642(5) has begun. In addition, GM asserts that it is prohibited by Section 320.641(7) from naming a replacement dealer pursuant to Section 320.642(5) during the pendency of a franchise cancellation proceeding. GM claims that Proposed Rule 15C-7.004(4)(a) ". . . threatens, restricts, and may even eliminate the manufacturer' s exemption."

34. The more likely result in practice is that Proposed Rule 15C-7.004(4)(a) will extenuate the 12 month period of exemption from protest procedures. A license revocation or surrender almost always follows a franchise cancellation proceeding. 8/

35. Even if the license revocation or surrender precedes the franchise cancellation proceeding, Proposed Rule 15C-7.004(4)(a) does not deny GM a substantial right without due process or a "clear point of entry." The 12 month period of exemption from protest is not a ". . . substantial and vested right . . ." which Section 320.642(5), Florida Statutes, "commands." The quoted language is more accurately applied to the right of existing dealers to protest an additional dealership. Even if the quoted language is equally applicable to the statutory exemption in Sec. 320.642(5), the two "rights" must be balanced in a manner that effectuates the statement of legislative intent in Sec. 320.605.

36. The 12 month period of exemption from protest is an exception to the statutory right of dealers to protest an additional dealership or relocated dealer. Statutory exceptions to general statutory provisions are to be strictly construed against one attempting to take advantage of the exception. State v. Nourse, 340 So.2d 966, 969 (Fla. 3d DCA 1976). Exemptions from general statutory requirements are to be construed in the same manner as exceptions. See, e.g., Tribune Company v. In re Public Records, P.C.S.O., 493 So.2d 480, 483 (Fla. 2d DCA 1986) (citing Cf. Nourse, which dealt with an exception, for the proposition that exemptions from disclosure in Ch. 119 should be construed narrowly); Haines v. St. Petersburg Methodist Home, Inc., 173 So.2d 176, 179 (Fla. 2d DCA 1965)(holding that exemptions from taxation are to be strictly construed against the taxpayer and in favor of the sovereign). Any ambiguity in the exception provided in Section 320.642(5) to the statutory right of existing dealers to protest additional or relocated dealer is properly construed in a manner that restricts the use of the exception. Nourse, 340 So.2d at 969.

37. The position asserted by GM is based upon the assumption that one claiming the benefit of an exemption has a due process right to notice from the agency that the period of exemption has begun. GM cites no authority for such an assumption and no authority has been found by the undersigned. It is not unreasonable for the Department to place the onus of determining when the statutory exemption begins to run upon the person claiming the benefit of the exemption. GM has access to public records maintained by the Department that disclose any license revocation or surrender and can otherwise assure itself of notice of a license revocation or surrender through the terms of the franchise agreement.

38. Construing the statutory exemption in Section 320.642(5), Florida Statutes, narrowly against GM effectuates the statement of legislative intent in Section 320.605. The separate elements of legislative intent in Section 320.605 are balanced in the protest procedures and criteria prescribed in Section 320.642.

39. The procedures and criteria in Section 320.642, Florida Statutes, must be followed in determining whether existing dealers are providing adequate representation. The procedures and criteria prescribed in Section 320.642 are susceptible to change and conditions that warrant an additional or replacement dealer at a given point in time may not lead to a similar result at a later point in time.

40. Proposed Rule 15C-7.004(4)(a) recognizes the fact that conditions prescribed in Section 320.642, Florida Statutes, change over time and effectuates the statement of legislative intent in Section 320.605. If the 12 month exemption period were to begin on the date the manufacturer cancel led the franchise agreement, the manufacturer could effectively circumvent the statutory right of dealers to protest an additional dealership by artificially delaying the date of the franchise cancellation until the manufacturer was ready to open or reopen the same or successor dealer within 12 months of the franchise cancellation. 9/ Recognizing that conditions change, Proposed Rule 15C-7.004(4)(a) eliminates any potential abuse by manufacturers and facilitates the statutory right of existing dealers to protest an additional dealership or replacement dealer on a recurring basis.

41. Proposed Rule 15C-7.004(4)(a) recognizes the fact that the agency charged with responsibility for administering Chapter 320, Florida Statutes, must have the means of assuring itself of information sufficient to determine when the 12 month period of exemption from protest begins and whether the opening or reopening of the same or successor dealer is subject to protest. If the 12 month period of exemption from protest were to begin upon abandonment or execution of a buy-sell agreement, the agency charged with responsibility for administering the protest and exemption procedures in Section 320.642 would have insufficient means of assuring itself of the information required to determine when the 12 month period of exemption from protest began. Determining the 12 month exemption period by reference to the revocation or surrender of the dealer's license defines both the protest period and exemption period by reference to the only event of closing for which the agency charged with responsibility for administering both periods maintains records.

42. The Department's interpretation of the time to begin the 12 month period of exemption from protest in Section 320.642(5), Florida Statutes, effectuates a reasonable balance of the separate elements of legislative intent in Section 320.605. Those elements include regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, and providing consumer protection and fair trade.

43. The economic impact statement for Proposed Rule 15C-7.004(4)(a) is valid. An economic impact statement is not required to state the exact economic impact on each person affected. Department of Natural Resources v. Sail fish Club of Florida, Inc., 473 So.2d 261, 265 (Fla. 1st DCA 1985) review denied 484 So.2d 9. An agency rule will not be declared invalid merely because the economic impact statement is not as complete as possible. Health Care and Retirement Corporation of America v. Department of Health and Rehabilitative Services, 463 So.2d 1175, 1178 (Fla. 1st DCA 1984). An economic impact statement is sufficient if it is implicit in the statement that there will be

some economic impact on the individual interests affected. Sailfish Club of Florida, Inc., 473 So.2d at 265. Any deficiency in the economic impact statement must be so grave as to impair the fairness of the proceeding. Health Care and Retirement Corporation of America, 463 So.2d at 1178. Even if an economic impact statement is less than thorough, the hearing officer is not obliged to find the rule invalid absent a showing that the proceeding had been rendered unfair or that the action taken was incorrect. Plantation Residents' Association, Inc. v. School Board of Broward County, 424 So.2d 879 (Fla. 1st DCA 1982) review denied 436 So.2d 100.

44. There are no facts of record to show that the fairness of this proceeding has been impaired or that the action taken is incorrect as a result of the alleged deficiency in the economic impact statement. The economic impact statement discloses that there will be some economic impact on manufacturers. It is not necessary for the Department to predict the incremental number and cost of all hearings that will result from the proposed rule.

45. Proposed Rule 15C-7.004(4)(a) is not an invalid exercise of delegated legislative authority within the meaning of Section 120.52(8), Florida Statutes. The Department did not fail to follow applicable rulemaking procedures, including an adequate economic impact statement. The Department did not exceed its grant of rulemaking authority. The Department's interpretation of Section 320.642(5) does not enlarge, modify, or contravene the specific provisions of law implemented. Proposed Rule 15C- 7.004 (4)(a) is not vague, does not fail to establish adequate standards for agency decisions, and does not vest unbridled discretion in the Department.

46. There may be other events of closure from which to begin the 12 month exemption from protest. Alternatively, the Department could have decided to begin the 12 month period of exemption from protest upon the occurrence of any one of the five events of closure stipulated to by the parties in this proceeding. The event of closure selected by the Department, however, is based upon fact, logic, and reason and effects a reasonable balance of the separate elements of legislative intent in Section 320.605, Florida Statutes. The Department's interpretation is not clearly erroneous and is not arbitrary or capricious.

Proposed Rule 15C-7.004(4)(b)

47. Proposed Rule 15C-7.004(4)(b) provides procedures by which an existing dealer may change its address. The scope of Proposed Rule 15C-7.004(4)(b) is limited to the relocation of an existing dealership. The proposed rule requires the dealer to state the specific provision in Section 320.642(5), Florida Statutes, which exempts the proposed location from consideration as an additional dealership.

48. Proposed Rule 15C-7.004(4)(b) is not an invalid exercise of delegated legislative authority within the meaning of Section 120.52(8), Florida Statutes. The Department has not exceeded its grant of rulemaking authority. The proposed rule does not enlarge, modify, or contravene the specific provisions of law implemented.

49. Proposed Rule 15C-7.004(4)(b) merely reiterates what is permitted under Section 320.642, Florida Statutes. Section 320.642 authorizes existing dealers to protest the relocation of a dealer if the relocation meets or satisfies one of the requirements or conditions in Section 320.642(3). Section 320.642(5) exempts the relocation of a dealer from the protest of an existing

dealer if the relocation satisfies the requirements for exemption under Section 320.642(5)(a)-(d). If a dealer relocates to a proposed location that does not meet or satisfy the requirements or conditions for protest in Section 320.642(3) or if the relocation satisfies the requirements for exemption in Section 320.642(5), the Department has no choice but to recognize the relocated dealer as the franchised dealer of the authorizing manufacturer.

50. Proposed Rule 15C-7.004(4)(b) is not vague, does not fail to establish adequate standards, and does not vest unbridled discretion in the Department. The requirement that the dealer indicate the provision in Section 320.642(5), Florida Statues, which exempts the proposed location from consideration as an additional dealership imposes sufficient specificity and adequate standards to preclude the exercise of unbridled discretion. The proposed rule must also be construed in a manner that gives effect to the provisions of Section 320.642(3). The requirements and conditions in Section 320.642(3) provide additional specificity and standards for applying the proposed rule.

51. Proposed Rule 15C-7.004(4)(b) does not conflict with the terms of Section 320.641(1), Florida Statutes. Section 320.641(1) requires a manufacturer to give written notice to a dealer and the Department of the manufacturer's intent to cancel or replace a franchise. 10/ Section 320.641(1) is limited to the cancellation or replacement of a franchise agreement and does not address the relocation of an existing dealer.

52. Proposed Rule 15C-7.004(4)(b) does not conflict with the terms of Section 320.642, Florida Statutes. Section 320.642(1) requires a manufacturer to give written notice to the Department of the manufacturer's intent to establish an additional dealership or permit the relocation of an existing dealership. The fact that Section 320.642(1) requires notice of the manufacturer's intent to permit an existing dealer to relocate does not preclude the dealer from relocating without the manufacturer's permission. The proposed rule merely requires the same notice to the Department from a dealer who intends to relocate without the permission of the manufacturer as Section 320.642(1) requires from a manufacturer who intends permit the dealer to relocate. The Department has no authority to prevent a relocation with or without the permission of the manufacturer if the relocation either fails to satisfy the conditions and requirements that precipitate the protest procedures in Section 320.642(3) or satisfies the conditions and requirements for exemption from protest in Section 320.642(5)(a)-(d).

53. The fact that franchise agreements are entered into by manufacturers for specific locations does not create a statutory impediment to the relocation of a dealer without the permission of the manufacturer. If the manufacturer determines that the relocation of a dealer without the permission of the manufacturer violates the franchise agreement, the appropriate remedy for the manufacturer is to institute a franchise cancellation proceeding pursuant to Section 320.641, Florida Statutes.

54. The economic impact statement for Proposed Rule 15C-7.004(4)(b) is valid for two reasons. First, the Department has no statutory authority to take any action other than the action taken in the proposed rule. Second, the economic impact statement satisfies the criteria generally applicable to such statements. See discussion at Conclusions of Law, paras. 26 and 27, supra.

55. There are no facts of record to show that the fairness of this proceeding has been impaired or that the action taken is incorrect as a result of the alleged deficiency in the economic impact statement. The economic impact

statement discloses that there will be some economic impact on manufacturers. There is no practical way to calculate with precision the economic impact that the rule will have on manufacturers and dealers. There is no way to know how many dealers will wish to move without their manufacturer's permission or how many dealers would be prevented by a manufacturer from moving from an unprofitable location in the absence of the rule.

56. Proposed Rule 15C-7.004(4)(b) is not an invalid exercise of delegated legislative authority. The Department did not fail to follow applicable rulemaking procedures, including an adequate economic impact statement. The Department did not exceed its grant of rulemaking authority. The Department's interpretation of applicable law does not enlarge, modify, or contravene the specific provisions of law implemented. The proposed rule is not vague, does not fail to establish adequate standards for agency decisions, and does not vest unbridled discretion in the Department. The proposed rule is not arbitrary or capricious.

Proposed Rule 15C-7.004(7)(d) and Florida Administrative Code Rule 15C-1.008

57. Section 320.642(4), Florida Statutes, limits the life of an order denying a proposed additional or relocated dealership to 12 months. Chapter 320, however, does not impose a limit on the life of an order entered pursuant to Section 320.642 approving an additional or relocated dealership.

58. Proposed Rule 15C-7.004(7)(d) and Florida Administrative Code Rule 15C-1.008 limit the life of an order approving an additional or relocated dealership. The proposed rule requires construction of an additional or relocated dealership to begin within 12 months of the date of the order of approval and requires such construction to be completed within 24 months of the date of the order of approval. The existing rule provides that an order approving an additional or relocated dealer is effective for a period of 12 months from the date of the final order, or in the event of an appeal, 12 months from the date of the court's decision. A different period for the life of an order may be established by the Director for good cause shown.

59. The interplay of the proposed and existing rules produces the following effect. An order approving an additional or relocated dealership is good for 12 months unless some other period is established for good cause or unless the dealership approved must be constructed. If the dealership must be constructed, construction must begin within 12 months of the date of the order of approval and end within 24 months of the date of the order of approval unless the period for beginning and completing construction is extended for good cause.

60. The proposed rule and the existing rule clearly limit the life of an order approving an additional or relocated dealership to a period less than the indefinite period created by legislative omission. The issue for determination is whether the limitations imposed by the proposed rule and existing rule effectuate legislative intent for Chapter 320.

61. Neither the proposed nor existing rule exceeds the grant of rulemaking authority. The Department has implied statutory authority to impose limits on the effective life of its orders entered under Section 320.642, Florida Statutes. Authority which is indispensable or useful to the valid purposes of a statute may be inferred or implied by authority expressly given. State v. Atlantic Coast Line R. Co., 47 So 969 (Fla. 1908); State ex rel Railroad Com'rs. v. Atlantic Coast Line R. Co., 54 So 394 (Fla. 1911). When authority is given

by a statute to accomplish a stated governmental purpose, there is also given by implication the authority to do everything reasonably necessary to accomplish any authorized purpose. Sylvester v. Tindall, 18 So.2d 892 (Fla. 1908).

62. The statement of legislative intent in Section 320.605, Florida Statutes, includes separate elements that must be balanced in order to achieve the overall objective of protecting ". . . the public health, safety, and welfare of the citizens of the state . . . ." Legislative mandates to maintain competition, provide consumer protection, and provide fair trade require that the interest in providing adequate representation to manufacturers must be balanced against the interest in avoiding dealer saturation ("over dealering") in a given market or community.

63. Section 320.642(2), Florida Statutes, requires the Department to make the determination of whether an additional or relocated dealer is justified. Section 320.642(2)(b) describes the type of evidence that may be considered in making such a determination. The type of evidence to be considered includes economic conditions, impacts on consumers, and impacts on existing dealers.

64. Economic conditions and impacts change over time. A determination that is valid today may not be valid five or ten years from now. GM urges that an order approving an additional or relocated dealership has an indefinite effective life by virtue of legislative omission. Under GM's approach, an additional or relocated dealer approved in 1991 can be established in 1996, 2005, or at some later point without repeating the dealer protest procedures legislatively authorized required in Section 320.642, Florida Statutes. The protest procedures in Section 320.642, however, are required for the purpose of determining whether there is adequate representation in the community, i.e., whether there is competition, consumer protection, and fair trade in the community within the meaning of Section 320.605. Authority to limit the effective life of an order approving an additional or relocated dealer is both useful and indispensable to accomplishing the objectives of Sections 320.605 and 320.642, Florida Statutes.

65. Neither Proposed Rule 15C-7.004(7)(d) nor Florida Administrative Code Rule 15C-1.008 is vague or fails to establish adequate standards for agency decisions. The limit of 12 months established in the existing rule is stated in terms of a specific period of time. A period of 12 months is consistent with the statutory scheme in Sections 320.60-320.70, Florida Statutes, and is appropriate to the statement of legislative intent in Section 320.605. Exceptions to rule limiting orders of approval to 12 months are expressed in terms of beginning and completing construction and in terms of good cause shown. The beginning and completion of construction and good cause provide adequate standards for extending the effective life of orders approving an additional or relocated dealer.

66. Neither Proposed Rule 15C-7.004(7)(d) nor Florida Administrative Code Rule 15C-1.008 enlarges, modifies, or contravenes the specific provisions of the law implemented. Legislative omission of a limit on the effective date of an order approving an additional or relocated dealer does not preclude the imposition of such a limit by administrative rule. The imposition of a limit on such orders by administrative rule is consistent with and effectuates the statement of legislative intent in Section 320.605.

FINAL ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Proposed Rules 15C-7.004(4)(a), (4)(b), and (7)(d), and Florida Administrative Code Rule 15C-1.008 do not constitute an invalid exercise of delegated legislative authority;

2. Each challenge to Proposed Rules 15C-7.004(4)(a), (4)(b), and (7)(d), and each challenge to Florida Administrative Code Rule 15C-1.008 is DENIED, and the petitions are hereby dismissed.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this 8th day of July 1991.

_____

DANIEL MANRY
Hearing Officer
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-1550
(904) 488-9675

Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of July 1991.

ENDNOTES

1/ The parties and their positions in each case are reflected in the style of the case. A party who has intervened in support of the position asserted by a primary party is joined to the name of the other party by the word "and". A party who has intervened and asserts a different position than one or more of the primary parties is joined to the primary party by the indication "vs.".

2/ Except for references to Sec. 320.27, Fla. Stat., all chapter and statutory references are to Florida Statutes (1989) unless otherwise stated. Sec. 320.27 was amended in 1990 by Ch. 90-163, Laws of Florida. The amendments are set forth in Sec. 320.27, Fla. Stat. (1990 Supp.).

3/ Except for references to Sec. 320.27, Fla. Stat., all chapter and statutory references are to Florida Statutes (1989) unless otherwise stated. Sec. 320.27 was amended in 1990 by Ch. 90-163, Laws of Florida. The amendments are set forth in Sec. 320.27, Fla. Stat. (1990 Supp.).

4/ Sec. 320.642(5)(a)-(d), Fla. Stat., imposes certain criteria that must be met for the exemption from protest to apply. Those criteria, however, are not at issue in this proceeding.

5/ A dealership closes each day that it closes its doors. The parties agreed, however, that the closing that is implicit in Sec. 320.642(5), Fla. Stat., requires a substantial closing similar to an abandonment described in Sec.

320.641(4). Abandonment occurs under Sec. 320.641(4) whenever the dealer fails to be engaged in business with the public for 10 consecutive business days excluding acts of God, work stoppages, or delays caused by a strike, labor difficulties, freight embargoes, or other causes over which the dealer has no control, including a violation of Sections 320.60-320.70, Florida Statutes.

6/ The Department would have information sufficient to determine the date for beginning the 12 month period of exemption from protest if the closing occurred upon the cancellation of the franchise agreement. Section 320.641(1), Fla. Stat., requires written notice to the Department of the manufacturer's intent to cancel a franchise agreement. However, the potential for frustrating legislative intent for Ch. 320 is greater if the 12 month period of exemption from protest begins when the franchise agreement is cancelled. See discussion at Conclusions of Law, paras. 20-25, infra.

7/ Sec. 320.641(3), Fla. Stat., also provides that franchise agreements and certificates of appointment shall continue in effect until a final adjudication is entered in the franchise cancellation proceeding.

8/ But see, General Motors Corporation, Chevrolet Motor Division, v. Florida Department of Highway Safety and Motor Vehicles, Potamkin Chevrolet, Inc. and Kelley Chevrolet, Inc., Division of Administrative Hearings Case NO. 91-0217, in which the license revocation or surrender preceded the franchise cancellation proceeding.

9/ There are two conjunctive requirements that must be met in order for a manufacturer to avail itself of the statutory exemption in Sec. 320.642(5), Fla. Stat. The first requirement is procedural in that it requires the opening or reopening of the same or successor dealer within 12 months of an unspecified event. The second requirement is substantive in that it requires objective criteria prescribed in Sec. 320.642(5)(a)-(d) to be met in order for the exemption to apply.

10/ Sec. 320.641(1), Fla. Stat., in relevant part, requires a manufacturer to:

> . . . give written notice to the motor vehicle dealer and the department of the licensee's intention to discontinue, cancel, or fail to renew a franchise agreement or of the licensee's intention to modify a franchise or replace a franchise with a succeeding franchise . . .

APPENDIX

There are no disputed issues of material facts in this proceeding. The facts stipulated to by the parties before and during the formal hearing are accepted in the Findings of Fact in this Final Order.

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REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DIVISION OF ADMINISTRATIVE HEARINGS AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

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DISTRICT COURT OPINION

==========

IN THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT, STATE OF FLORIDA

GENERAL MOTORS CORPORATION,

Appellant,

v.

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES; FLORIDA AUTOMOBILE DEALERS ASSOCIATION, and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION,

Appellees.
_____/

ED MORSE CHEVROLET OF SEMINOLE, INC.,

Appellant,

v.

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED.

CASE NO. 91-2502
DOAH CASE NO. 91-2591RP

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES; FLORIDA AUTOMOBILE DEALERS ASSOCIATION, and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION,
_____/

CASE NO. 91-2503

(CONSOLIDATED)

Opinion filed September 22, 1993.

An appeal from an Order of the Division of Administrative Hearings.

Dean Bunch of Cabaniss, Burke & Wagner, P.A., Tallahassee, for General Motors Corporation; Michael A. Fogarty and Richard E. Fee of Glenn Rasmussen & Fogarty, Tampa; Lee Stracher of Stracher & Harmon, P.A., Plantation, for Appellant Ed Morse Chevrolet of Seminole, Inc.

Enoch J. Whitney, General Counsel; Michael J. Alderman, Assistant General Counsel, Department of Highway Safety and Motor Vehicles, Tallahassee for Appellee State of Florida Department of Highway Safety and Motor Vehicles; William C. Owen of Carlton, Fields, Ward, Emmanuel, Smith & Cutler, P.A., Tallahassee, for Appellee Florida Automobile Dealers Association; James D. Adams of Adams & Quinton, P.A., Boca Raton, for South Florida Auto Truck Dealers Association.

WEBSTER, J.

In these two consolidated appeals, appellants seek review of a final order entered by a Division of Administrative Hearings hearing officer. In that final order, the hearing officer concluded that Florida Administrative Code Rule 15C-1.008 and Proposed Rules 15C7.004(4)(a), (4)(b) and (7)(d) do not constitute invalid exercises of authority delegated to the Department of Highway Safety and Motor Vehicles (Department) by the legislature; and, accordingly, denied appellants' challenges to those rules. On appeal, appellants address only rule 15C- 1.008, which they argue is inconsistent with chapter 320, Florida Statutes (1989); and exceeds the rulemaking authority granted to the Department by the legislature We affirm.

Rule 15C-1.008 is intended principally to implement section 320.642, Florida Statutes, which addresses the procedure to be followed to determine whether an application for a motor vehicle dealer license should be granted when a manufacturer, factory branch, distributor or importer of motor vehicles "proposes to establish an additional . . . dealership or permit the relocation of an existing dealer to a location within a community or territory where the same line-make vehicle is Presently represented by a franchised . . . dealer or dealers." 320.642(1), Fla. Stat. (1989). Subsection (2) of that section requires the Department to deny an application for a motor vehicle dealer license when "[a] timely protest is filed by a presently existing franchised . . . dealer with standing, and the manufacturer, factory branch, distributor or importer "fails to show that the existing franchised dealer or dealers who register new motor vehicle retail sales or retail leases of the same line-make in the community or territory of the proposed dealership are not providing adequate representation of such line-make motor vehicles in such community or territory." 320.642(2)(a)1. & 2., Fla. Stat. (1989). Subsection (2) requires,

further, that, in making a determination regarding the adequacy of existing representation in the community or territory, the Department consider evidence directed to Certain enumerated issues, or "questions." 320.642(2)(b), Fla. Stat. (1989).

Appellants object only to the last portion of rule 15C- 1.008, which reads:

> The Director may make such further investigation and hold such hearing as he deems necessary to determine the questions specified under Section 320.642. A determination so made by the Director shall be effective as to such license for a period of twelve (12) months from the date of the Director's Order, or date of final judicial determination in the event of an appeal, unless for good cause a different period is set by the Director in his order of determination.

(Emphasis added.) Appellants argue that, because no such time limit is contained in section 320.642, the Department lacks the authority to adopt one by rule. They do not argue on this appeal that the time limit chosen is unreasonable and, therefore, arbitrary or capricious. Rather, they argue that any such time limit is beyond the Department authority. We are unable to accept appellants' argument.

The legislature's intent in adopting sections 320.60 through 320.70 is expressed as follows:

> It is the intent of the Legislature to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers.

320.605, Fla. Stat. (1989). As to chapter 320 generally, the legislature has provided that "[t]he [D]epartment shall administer and enforce the provisions of this chapter and may adopt such rules as it deems necessary or proper for the administration hereof." 320.011, Fla. Stat. (1989). The legislature has reiterated its intent in this regard in section 320.69, which relates Specifically to sections 320.60 through 32070: "The [D]epartment may make such rules and regulation as it shall deem necessary or proper for the effective administration and enforcement of this law." 320.69, Fla. Stat. (1989).

"[R]ulemaking authority may be implied to the extent necessary to properly implement a statute governing the agency's statutory duties and responsibilities. Department of Professional Regulation, Board of Professional Engineers v. Florida Society of Professional Land Surveyors, 475 So.2d 939, 942 (Fla. 1st DCA 1985). Accord Fairfield Communities v. Florida Land and Water Adjudicatory Commission, 522 So.2d 1012 (Fla. 1st DCA 1988). Moreover,

> [i]t is well established in Florida that the Legislature, having enacted a Statute complete in itself which declares a legislative policy or standard and operates to limit the power delegated, may authorize an administrative agency to prescribe rules and regulations for its administration. . . . Where the empowering provision of a statute states simply that an agency may "make such rules and regulations as may be necessary to carry out the provisions of this Act", the validity of regulations promulgated thereunder will be sustained so long as they are reasonably related to the purposes of the enabling legislation, and are not arbitrary or capricious.

Florida Beverage Corp. v. Wynne, 306 So.2d 200, 202 (Fla. 1st DCA 1975) (citations omitted). Accord General Telephone Co. v. Florida Public Service Commission, 446 So.2d 1063 (Fla. 1984). We believe that the portion of rule 15C-1.008 to which appellants object constitutes a valid exercise of the Departments implied rulemaking authority

Sections 320.011 and 320.69 clearly give the Department the authority to adopt such rules as it deems necessary effectively to administer and to enforce the law, consistent with the legislative intent. The expressed intent is "to protect the public health, safety, and welfare of the citizens of the state by regulating the licensing of motor vehicle dealers and manufacturers, maintaining competition, providing consumer protection and fair trade and providing minorities with opportunities for full participation as motor vehicle dealers." 320.605, Fla. Stat. (1989).

"The purpose of [section] 320.642 . . . is to prevent powerful manufacturers from taking unfair advantage of their dealers by overloading a `market area with more dealers than can be justified by the legitimate interests of the manufacturer and its dealers, existing and prospective." Bill Kelley Chevrolet, Inc. v. Calvin, 322 So.2d 50, 52 (Fla. 1st DCA 1975), cert. denied, 336 So.2d 1180 (Fla. 1976). Accord Plantation Datsun, Inc. v. Calvin, 275 So.2d 26 (Fla. 1st DCA 1973). Consistent with that purpose, section 320.642(2) requires the Department to determine whether an additional (either new or relocated) dealership is justified, economically and otherwise, from the viewpoints of the existing dealers and the public, respectively. The types of evidence which the statute requires the Department to consider include demographic and market data. Clearly, such data changes over time, as does the economy. What may be a perfectly defensible determination based upon today's data, might well prove to be indefensible at some point in the future. It seems to us that, in order effectively to administer section 320.642, it is essential that the Department have the authority to limit the life of a determination made pursuant to that section. Accordingly, we conclude that the authority to adopt rule 15C-1.008 is fairly implied from chapter 320 generally and, more particularly, sections 320.60 through 320.70. Fairfield Communities, 522 So.2d at 1014; Florida Society of Professional Land Surveyors, 475 So.2d at 942.

AFFIRMED.

ERVIN, J., CONCURS; BOOTH, J., DISSENTS WITH WRITTEN OPINION.

BOOTH, J., DISSENTING:

A careful review of chapter 320, Florida Statutes, fails to reveal any basis for the challenged portion of Florida Administrative Code Rule 15C-1.008, which provides for automatic expiration of a Previously approved application for license. The following is the sum total of the rule on this matter:

> A determination so made [granting an application] by the Director shall be effective as to such license for a period of twelve (12) months from the date of the Director's Order, or date of final judicial determination in the event of an appeal, unless for good cause a different period is set by the Director in his order of determination.

This is no small "Procedural" matter, as the requirements for obtaining approval of such application are among the most arduous and expensive of any under Florida law. 2/

Briefly, the facts are that appellant obtained from General Motors in December 1987 a statement of intent to authorize an additional dealership in Seminole, Pinellas County, Florida. The dealership, to be operated by appellant herein, was to have an annual sales volume of up to 1,360 cars and trucks, and would require 213,825 square feet of property. In May 1988, appellant, after complying with the requirements of Sections 320.27 and 320.642, Florida Statutes, sent its Preliminary application for franchise motor vehicle license to the Department. Thereafter, an existing Chevrolet dealer in the area filed a protest contesting the need for appellant's new dealership. Following a lengthy Department of Administrative Hearings hearing in May 1989, the hearing officer concluded that - there was an existing need for appellant's dealership and recommended that appellant's application be granted. The Department thereafter issued a final order adopting the hearing officer's recommendation, and Consequently, in November 1989, notified appellant of the pertinent provision of rule 15C-1.008,

that the determination would be effective for a period of 12 months from the date of the order or date of final judicial determination.

The Protesting Chevrolet dealer took an appeal from the final order, and on June 18, 1990, the Second DCA affirmed the order without opinion. By this time, appellant had spent two and a half years and well over one million dollars acquiring the Site and obtaining approval. The Department informed appellant that this approval would expire at the end of one year, unless appellants complied with certain requirements which were not then explicated in any statute or rule. 3/

The Department and the majority rely on section 320.642, Florida Statutes, which rule 15C-1.008 purports to implement, as authority for the rule. That statute, while setting forth in considerable detail the procedure and evidentiary findings necessary for the Department's determination of whether an application should be granted, has no provision which even remotely implies that the Department has the authority to impose a time limit on an application it chooses to grant. 4/

In pursuit of statutory authority, the majority cites section 320.605, Florida Statutes, which is not cited in the Administrative Code as authority for the rule and in fact is merely a statement setting forth the general intent of the Legislature in adopting sections 320.60 through 320.70, Florida Statutes. Two other statutes proposed as authority are sections 320.011 and 320.69, Florida Statutes, which permit the Department to adopt such rules as it deems "necessary or proper" for administration of the provisions of chapter 320.

It is axiomatic that an agency has certain implied rulemaking authority limited to what is required or necessary to carry out the statutory purposes. Equally basic is the rule of Board of Trustees v. Board of Professional Land Surveyors, 566 So.2d 1358, 1360 (Fla. 1st DCA 1990), wherein this court held:

> All rulemaking authority delegated to administrative agencies is of course limited by the statute conferring the power. Department of Professional Regulation v. Florida Society of Professional Land Surveyors, 475 So.2d 939, 942 (Fla. 1st DCA 1985). According to section 120.52, Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if it goes beyond the powers, functions, and duties delegated by the Legislature." If the agency has exceeded its grant of rulemaking authority, or if the rule enlarges, modifies, or contravenes the specific provisions of law implemented, such infractions are among those requiring a conclusion that the proposed rule is an invalid exercise of delegated legislative authority. s. 120.52, F.S.

Section 120.54, Florida Statutes, provides that no agency has inherent rulemaking authority. An agency cannot adopt by rule omitted statutory provisions. Department of Business Regulation v. Salvation Limited, Inc., 452 So.2d 65, 66 (Fla. 1st DCA 1984). 5/

There is simply no Florida authority for the proposition that a statutory provision setting forth legislative policy-or enabling an administrative agency to enact rules as necessary confers upon the agency authority to make policy in areas in which the Legislature has declined to act. Here, the Legislature declined to impose a time limitation following approval of an application while specifying a 12-month delay after denial before reapplication would be allowed.

The universally understood rule, stated in 1 Am. Jur. 2d 42 is as follows: "General [statutory] language describing the powers and functions of an administrative body may be construed to extend no further than the Specific duties and powers conferred by the same statute." In Cataract Surgery Center v. Health Care Cost Containment Board, 581 So.2d 1359 (Fla. 1st DCA 1991), the agency claimed the power to adopt a rule requiring the Submission of certain data from ambulatory Surgery centers. Chapter 407, Specifically conferred Such authority upon the agency as to hospitals and nursing homes, but was absolutely silent on the subject of data collection from ambulatory Surgery centers. This court held that the general Statutory grant of rulemaking authority was nothing more than a restatement of the agency's common-law powers, and granted no authority to adopt the specific rule on collection of data from the surgery

centers. Indeed, it has been clear until now that a general grant of rulemaking authority does not permit an agency to legislate by adopting Provisions omitted from enabling Statutes. State Department of Insurance v. Insurance Service Office, 434 So.2d 908, 910 (Fla. 1st DCA 1983); State Department of Health and Rehabilitative Services v. McTigue, 387 So.2d 454 (Fla. 1st DCA 1980); Department of Health and Rehabilitative Services v. Florida Psychiatric Society, 382 So.2d 1280 (Fla. 1st DCA 1980).

The majority seems to confuse the issue of whether the adoption of Florida Administrative Code Rule 15C-1.008 was within the Department's delegated rulemaking authority, with the issue raised by the Department that the rule is a good idea." The latter is an issue to be addressed by the Legislature, not by the Department or a panel of this court.

The Department's rule totally fails to inform applicants what must be done to avoid the automatic one-year expiration. This rule not only permits but encourages Precisely what the Administrative Procedure Act was intended to prevent, to-wit: disparate treatment of similarly-situated applicants. Under the rule, an applicant must spend substantial sums of money and then engage in expensive Protracted litigation only to be rewarded with an "approval" which will expire in one year unless certain unspecified conditions are met. Appellant, after more than five years of litigation and vast expenditures, is left with nothing under the Department's rule except the right to start over.

ENDNOTES

1/ Nothing in the rules effective at the time of this application provides any notice to the applicant as to what is required to obtain an extension. Subsequently, a rule was adopted to require commencement of construction within 12 months of application approval. Fla. Admin. Code R. 15C-7.004(7)(d) (effective October 14, 1991).

2/ Section 320.27, Florida Statutes, sets forth lengthy and complex application Procedures, and requires, inter alia, a substantial financial commitment, as evidenced by:

> Such application shall describe the exact location of the place of business and shall state whether the place of business is owned by the applicant and when acquired, or, if leased, a true copy of the lease shall be attached to the application. The applicant shall certify that the location provides an adequately equipped office and is not a residence; that the location affords sufficient unoccupied Space upon and within which adequately to store all motor vehicles offered and displayed for sale; and that the location is a suitable place where the applicant can in good faith carry on such business and keep and maintain books, records, and files necessary to conduct such business, which will be available at all reasonable hours to inspection by the department or any of its inspectors or other employees.

Section 320.642 sets forth detailed procedures governing notice to other dealers. If an existing dealer protests, time- consuming, expensive litigation

follows in which the Department must weigh evidence relevant to eleven different factors, in determining whether to grant the application. 320.642, Fla. Stat.

3/ Appellant's unsuccessful efforts to Satisfy these requirements are the subject of a companion Suit now Pending in this court, case number 92-1420.

4/ Compare section 381.710(2)(b), which specifically provides for a one-year expiration date for a certificate of need permitting construction of a health care facility as defined in section 381.702, Florida Statutes.

5/ The converse of the rule prohibiting administrative agencies from enlarging, modifying, or contravening provisions of statutes is that statutes purporting to allow administrative agencies to do so are violative of Article II, Section 3 of the Florida Constitution, which sets forth the principle of separation of powers. Florida Home Builders Association vs. Division of Labor, Bureau of Apprenticeship, 367 So. 2d 219 (Fla. 1979). An appellate court must not adopt a construction of a statute which would render the statute unconstitutional. State v. Hoyt, 609 So. 2d 744, 747 (Fla. 1st DCA 1992).

MANDATE
From
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable Daniel Manry, Hearing Officer,

WHEREAS, in that certain cause filed in this Court styled: Division of Administrative Hearings

GENERAL MOTORS CORPORATION

v.

Case No. 91-2502

FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES; FLORIDA AUTOMOBILE DEALERS ASSOCIATION, and SOUTH FLORIDA AUTO TRUCK DEALERS ASSOCIATION, et al.

Your Case No. 91-2591RP, 91-2821RP
91-2822RP, 91-2899RP
91-2901RP, 91-2902RP

The attached opinion was rendered on September 22, 1993.

YOU ARE HEREBY COMMANDED that further proceedings be had in accordance with said opinion, the rules of this Court and the laws of the State of Florida.

WITNESS the Honorable E. Earle Zehmer

Chief Judge of the District Court of Appeal of Florida, First District and the Seal of said court at Tallahassee, the Capitol, on this 16th day of December, 1993.

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Clerk, District Court of Appeal of Florida,
First District