

STATE OF CALIFORNIA



MEMO

To: All Licensed Vehicle Manufacturers/Distributors  
Public Mailing List

From: New Motor Vehicle Board  
1507 21<sup>st</sup> Street, Suite 330  
Sacramento, California 95811  
(916) 445-1888  
(916) 323-1632 (fax)  
[nmvp@nmvp.ca.gov](mailto:nmvp@nmvp.ca.gov)

Date: January 2016

Subject: (1) Statutory Notice Re: Factory Ownership of Dealership  
(2) Annual Statutory Notice Re: Dealer Development Stores  
(3) Assembly Bill 759 - Effective January 1, 2016  
(4) Assembly Bill 1178 - Effective January 1, 2016  
(5) Regulations - Effective January 1, 2016

---

---

STATUTORILY REQUIRED NOTICES

Subdivision (o) of Vehicle Code section 11713.3 prohibits factory-owned dealerships within a 10-mile radius of a privately owned dealership of the same line-make (see page 4). There are two limited exceptions to this prohibition: (1) temporary ownership (Veh. Code § 11713.3(o)(2)(A)); and (2) bona fide dealer development program (Veh. Code § 11713.3(o)(2)(B)). The statutorily required notices that are filed with the Board provide as follows:

**(1) Statutory Notice Re: Factory Ownership of Dealership**

Vehicle Code section 11713.3(o)(3)(A) requires every manufacturer, branch, and distributor that owns or operates a dealership for a temporary period (not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months) shall give written notice to the Board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

**(2) Annual Statutory Notice Re: Dealer Development Stores**

Vehicle Code section 11713.3(o)(3)(B) requires every manufacturer, branch, and distributor that owns an interest in a dealer as part of a bona fide dealer development program as defined shall give written notice to the Board, annually, of the name and location of each

dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

### **Filings Subject to Public Disclosure**

The Board maintains all of these filings as public records subject to disclosure under the California Public Records Act (Gov. Code § 6250 et seq.).

## **LEGISLATION**

### **(3) Assembly Bill 759 (effective January 1, 2016)**

Assembly Bill 759 was co-sponsored by the Recreation Vehicle Industry Association and California Recreational Vehicle Dealers. This bill cleans up a number of inconsistencies in the Vehicle Code. It deletes all references to Article 5 RV protests in Sections 3066 and 3067; parallel provisions are added to Article 5 (Sections 3080 and 3081). Since this bill was enacted prior to AB 1178, it incorporates changes to Sections 3050.7 and 11713.3 proposed by both bills (see chart highlighting the changes on pages 5-6).

### **(4) Assembly Bill 1178<sup>1</sup> (effective January 1, 2016)**

Assembly Bill 1178 was sponsored by the California New Car Dealers Association (CNCDA). It establishes an export or sale-for-resale prohibition policy protest in Article 6 of the Vehicle Code. An association may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. An association is defined as an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers. The relief sought in this protest is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association. The association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3. The Board's authority to hear protests submitted by an association sunsets on January 1, 2019 (see attached chart highlighting the changes on pages 7-9).

### **Implementation**

The legal staff is working to update the website, various publications including the *Guide to the New Motor Vehicle Board* and *Informational Guide for Manufacturers and Distributors*, and the sample notices and protests. We anticipate the updates being completed in the next couple of months.

---

<sup>1</sup> The provisions in AB 1178 pertaining to an association protest are in effect only until January 1, 2019, unless a later enacted statute deletes or extends that date. The amendments to Vehicle Code sections 11713.3 do not sunset on January 1, 2019.

## REGULATIONS

The Board recently promulgated several regulatory amendments pertaining to case management and sanctions that are summarized, in part, as follows (see pages 10-14 for the complete text):

### (5) Regulations (Effective January 1, 2016)

**13 CCR § 550** - definitions of “proposed stipulated decision and order” and “stipulated decision and order of the board” were added. These definitions are supplemental to and do not replace those found in the Vehicle Code or other applicable statutes and regulations.

**13 CCR § 551.2** - clarifies that a Board Administrative Law Judge can issue subpoenas. Additionally, all written requests for the issuance of a Board subpoena need to be “properly served on the opposing party or parties.” Unlike the civil courts which allow parties to issue their own subpoenas, the Board controls discovery and issues all subpoenas. It is important that parties appearing before the Board are notified of any subpoena requests prior to the Board’s issuance of the subpoena so there is an opportunity to file a motion to quash. The requirement that the original proof of service be filed with the Board following service upon the witness or deponent has been eliminated; a copy is sufficient. Litigants have the option of filing an original or copy.

**13 CCR § 551.21** - clarifies that a party requesting sanctions against another party may be awarded its expenses and attorney’s fees in seeking sanctions, and, conversely, that a party from whom sanctions are sought who successfully defends against such a motion may be awarded its expenses and attorney’s fees in opposing the motion for sanctions.

**13 CCR § 551.22** - Vehicle Code section 3050.7 provides that a Proposed Stipulated Decision and Order will be deemed adopted by the Board unless a member of the Board objects to it within 10 days after receipt thereof. In the event a member objects to the Proposed Stipulated Decision and Order, the procedure for getting this matter before the Board at a noticed meeting has been formalized.

If you have any questions or comments, please do not hesitate to contact Robin Parker, Senior Staff Counsel, at (916) 323-1536 or [rparker@nmvb.ca.gov](mailto:rparker@nmvb.ca.gov).

### California Vehicle Code Section 11713.3(o)

It is unlawful and a violation of this code for a manufacturer, manufacturer branch, distributor, or distributor branch licensed pursuant to this code to do, directly or indirectly through an affiliate, any of the following:

...

(o) (1) To compete with a dealer in the same line-make operating under an agreement or franchise from a manufacturer or distributor in the relevant market area.

(2) A manufacturer, branch, or distributor, or an entity that controls or is controlled by a manufacturer, branch, or distributor, shall not, however, be deemed to be competing in the following limited circumstances:

(A) Owning or operating a dealership for a temporary period, not to exceed one year at the location of a former dealership of the same line-make that has been out of operation for less than six months. However, after a showing of good cause by a manufacturer, branch, or distributor that it needs additional time to operate a dealership in preparation for sale to a successor independent franchisee, the board may extend the time period.

(B) Owning an interest in a dealer as part of a bona fide dealer development program that satisfies all of the following requirements:

(i) The sole purpose of the program is to make franchises available to persons lacking capital, training, business experience, or other qualities ordinarily required of prospective franchisees and the dealer development candidate is an individual who is unable to acquire the franchise without assistance of the program.

(ii) The dealer development candidate has made a significant investment subject to loss in the franchised business of the dealer.

(iii) The program requires the dealer development candidate to manage the day-to-day operations and business affairs of the dealer and to acquire, within a reasonable time and on reasonable terms and conditions, beneficial ownership and control of a majority interest in the dealer and disassociation of any direct or indirect ownership or control by the manufacturer, branch, or distributor.

(C) Owning a wholly owned subsidiary corporation of a distributor that sells motor vehicles at retail, if, for at least three years prior to January 1, 1973, the subsidiary corporation has been a wholly owned subsidiary of the distributor and engaged in the sale of vehicles at retail.

(3) (A) A manufacturer, branch, and distributor that owns or operates a dealership in the manner described in subparagraph (A) of paragraph (2) shall give written notice to the board, within 10 days, each time it commences or terminates operation of a dealership and each time it acquires, changes, or divests itself of an ownership interest.

(B) A manufacturer, branch, and distributor that owns an interest in a dealer in the manner described in subparagraph (B) of paragraph (2) shall give written notice to the board, annually, of the name and location of each dealer in which it has an ownership interest, the name of the bona fide dealer development owner or owners, and the ownership interests of each owner expressed as a percentage.

...

## Assembly Bill 759

Vehicle Code Section	Amendment
3050.7. Stipulated Decisions and Orders	Adds references to Sections 3080 and 3085.2 (Article 5 and Article 6 hearing on protest provisions.)
3066. Hearings on Protests	Deletes all references to Article 5 RV protests, reflects both the establishment of an additional dealership and the relocation of an existing dealership, and changes “registered mail” to “certified mail.”
3067. Decision	Deletes references to Article 5 RV protests and changes “registered mail” to “certified mail.”
3068. Judicial Review	Changes “registered mail” to “certified mail.”
3070. Termination of Franchise	Changes reference from Section 3066 to Section 3080 and corrects the spelling of franchisor.
3072. Establishing or Relocating Recreational Vehicle Dealerships	Reflects both the establishment of an additional recreational vehicle dealership and the relocation of an existing recreational vehicle dealership, and clarifies the term “relevant market area”. These changes reflect what is done in practice and is consistent with Section 3062. Inaccurate references to “secretary” are changed to “executive director”, and Section 3080 is referenced in lieu of Section 3066. Section 3072(b)(5) was deleted because it is moot. “Recreational vehicle dealership” is used in lieu of “motor vehicle dealership.”
3072.5. Recreational Vehicle Line-Make	Section 331 is replaced with Section 331.3 to accurately reflect the definition of “recreational vehicle franchise.”
3073. Good Cause	Clarifies that the good cause factors apply to both establishments and relocations.
3074. Delivery and Preparation Obligations	Makes grammatical changes and changes “he or she” to “franchisee”.
3078. Consumer Complaints: Referral to Department of Consumer Affairs	Corrects an inaccurate reference to subdivision (e)(1) of Section 3072; the correct reference is subdivision (d). “Recreational vehicle dealership” is used in lieu of “motor vehicle dealership.”
3079. Application of Article	Clarifies that this article only applies to recreational vehicle franchises.
3080. Hearings on Protests	Establishes a hearing section in Article 5 for RV protests.
3081. Decision	Establishes a decision section in Article 5 for RV protests.
3082. Judicial Review	Establishes a judicial review section in Article 5 for RV protests.

<b>Vehicle Code Section</b>	<b>Amendment</b>
11705. Suspension or Revocation	Allows the DMV to suspend or revoke a dealer, manufacturer or distributor license for willful violations of Section 3064 and 3065. References were added to Sections 3074 and 3075 making this section applicable to the RV industry.
11713.1. Additional Unlawful Acts: Dealers	Recreational vehicles under Section 11713.1(f)(2)(B) are exempt from 11713.1 (f)(1) which makes it unlawful for a dealer to advertise for sale, sell, or purchase a new vehicle of a line-make for which the dealer does not hold a franchise. This section gives RV dealers the right to sell or purchase for resale new RVs for which they have no franchise. This is contrary to Section 11713.23; therefore Section 11713.1(f)(2) deleted the reference to recreational vehicles.
11713.3 Additional Unlawful Acts; Vehicle Manufacturers and Distributors	Makes clarifying changes to subdivision (e), which pertains to the transfer or assignment of a dealer's franchise. Adds violation of Article 5 RV protest provisions to the list of unlawful acts in subdivision (l). Since this bill was enacted prior to AB 1178, it amends subdivision (y) relating to an export or sale-for-resale prohibition policy (see detailed summary below.)
11713.23 Sale of New Recreational Vehicle: Written Recreational Vehicle Franchise	Adds new subdivision (e) which allows RV dealers to continue to sell inventory acquired by an RV dealer when a franchise agreement was in effect, even after that franchise had been terminated, cancelled or not renewed. This is a common practice in the RV industry.

## Assembly Bill 1178

Vehicle Code Section	Amendment
3050. Powers and Duties, Generally	Adds a new subdivision (e), which allows the Board to hear and decide an association protest challenging an export or sale-for-resale prohibition policy of a manufacturer or distributor pursuant to Section 3085. Dealer Members are precluded from participating in these protests absent a stipulation of all participants.
3050.1. Oaths, Depositions, Certification to Official Acts, and Issuance to Subpoenas	Authorizes discovery and the issuance of subpoenas in export or sale-for-resale prohibition protests.
3085. Export or Sale-for-Resale Prohibition Protest	An association (an organization primarily owned by, or comprised of, new motor vehicle dealers and that primarily represents the interests of dealers) may bring a protest challenging the legality of an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch at any time on behalf of two or more dealers subject to the challenged policy pursuant to subdivision (y) of Section 11713.3. The relief sought in this protest is limited to a declaration that an export or sale-for-resale prohibition policy of a manufacturer, manufacturer branch, distributor, or distributor branch violates the prohibitions of subdivision (y) of Section 11713.3. No monetary relief may be sought on behalf of the association or any dealers represented by the association. The association has the burden of proof to show that the challenged export or sale-for-resale prohibition policy violates subdivision (y) of Section 11713.3.
3085.2. Hearings on Protest	This section pertains to hearings on Article 6 protests and is similar to Sections 3066 (Article 4 protests) and 3080 (Article 5 protests). Subdivision (a) requires that a hearing be set within 60 days of receipt of the protest. The hearing is conducted by the Board or an Administrative Law Judge designated by the Board and is limited to the administrative record. The designated provisions of the Administrative Procedure Act that are applicable in Article 4 and Article 5 protest hearings are also applicable to Article 6 protest hearings. Subdivision (b) allocates the burden of proof to the association. Subdivision (c) reiterates that dealer members may not participate in Article 6 protests absent a stipulation of all parties.

<b>Vehicle Code Section</b>	<b>Amendment</b>
3085.2. Hearings on Protest	This section pertains to hearings on Article 6 protests and is similar to Sections 3066 (Article 4 protests) and 3080 (Article 5 protests). Subdivision (a) requires that a hearing be set within 60 days of receipt of the protest. The hearing is conducted by the Board or an Administrative Law Judge designated by the Board and is limited to the administrative record. The designated provisions of the Administrative Procedure Act that are applicable in Article 4 and Article 5 protest hearings are also applicable to Article 6 protest hearings. Subdivision (b) allocates the burden of proof to the association. Subdivision (c) reiterates that dealer members may not participate in Article 6 protests absent a stipulation of all parties.
3085.4. Decision	This section applies to decisions in Article 6 protests and is similar to Sections 3067 and 3081. Unlike those sections there is no penalty in the event the Board fails to act within the time prescribed because a manufacturer or distributor is not seeking approval of proposed action such as a termination, modification, establishment or relocation in an export or sale-for-resale prohibition protest.
3085.6. Judicial Review	This section pertains to judicial review in Article 6 protests and is similar to Sections 3068 and 3082.
3085.8. Application of Article	This article is applicable to any association which is primarily owned by or comprised of new motor vehicle dealers and acts on behalf of its new motor vehicle franchisees.
3085.10. Effective Date	Contains the sunset language as follows: "Article 6 remains in effect only until January 1, 2019, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2019, deletes or extends that date."

Vehicle Code Section	Amendment
11713.3 Additional Unlawful Acts; Vehicle Manufacturers and Distributors	<p>Subdivision (y)(1) allows a manufacturer or distributor to take an adverse action against a dealer pursuant to an export or sale-for-resale prohibition only if: (1) the prohibition policy was provided to the dealer in writing at least 48 hours before the sale or lease of the vehicle; and (2) the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition. In a proceeding challenging an adverse action, the manufacturer or distributor has the burden of proof by a preponderance of the evidence to show that: (1) the vehicle was exported or resold in violation of a prohibition policy; (2) that the prohibition policy was provided to the dealer in writing at least 48 hours prior to the sale or lease; and (3) that the dealer knew or reasonably should have known of the customer's intent to export the vehicle to a foreign country at the time of the sale or lease. A rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle if: (1) the dealer causes the vehicle to be registered in this or any other state; or (2) causes to be collected any applicable sales or use tax due to this state. Any policy that is in violation of this paragraph is void and unenforceable. (Section 11713.3(y)(3)) Subdivision (y)(2) specifies that a manufacturer's or distributor's prohibition policy is precluded from including provisions that require a dealer to make further inquiries into a customer's intent, identity, or financial ability to purchase or lease a vehicle based on any of the customer's characteristics listed or defined in Section 51 of the Civil Code "Unruh Civil Rights Act." A policy that is in violation of this subdivision is void and unenforceable.</p>

## Title 13 of the California Code of Regulations

### § 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) "Appeal" means an action pursuant to Vehicle Code section 3050(b) filed with the board by an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative against the department after any final decision of the department which adversely affects the application for issuance of the occupational license sought, or adversely affects the occupational license held by the appellant.

(d) "Appellant" means an applicant for, or holder of, a license as a new motor vehicle dealer, manufacturer, manufacturer branch, distributor, distributor branch, or representative, who files an appeal with the board pursuant to Vehicle Code section 3050(b).

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

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

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

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

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

(j) "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.

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

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

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

(n) "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, appeal or protest, or during the adjudication of a motion or an application for an order.

(o) "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.

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

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

(r) "Party" or "Parties" includes the petitioner, protestant, respondent, department, appellant, director, or intervenor.

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

(t) "Petitioner" means any person, including a board member, who files a petition seeking consideration by the board pursuant to Vehicle Code section 3050(c) 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.

(u) "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.

(v) "Protest" means an action filed with the board by a franchisee pursuant to Vehicle Code sections 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, or 3076.

(w) "Protestant" means any licensed new motor vehicle dealer as defined in Vehicle Code section 426 who files a protest with the board.

(x) "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.

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

(z) "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, 3052, 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075 and 3076, Vehicle Code; Sections 2015.5 and 2016.020, Code of Civil Procedure; and Section 472.5, Business and Professions Code.

## **§ 551.2. Subpoenas; Motion to Quash.**

(a) Upon the written request of any party that has been properly served on the opposing party or parties, the executive director or an administrative law judge designated by the board or its executive director may, and at the direction of the board the executive director shall, issue a subpoena for the attendance of any person before the board, for the attendance and testimony of a deponent, or a subpoena duces tecum for the production of papers, records, books, and electronically stored information by a witness or a deponent.

(b) The issuance of a subpoena for the attendance and testimony of a witness or for a subpoena duces tecum for the production of papers, records, books, and electronically stored information for hearing shall be governed by the requirements set forth in Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure, excepting the provisions of subdivision (c) of Section 1985, of that code. A copy of an affidavit shall be served with a subpoena duces tecum for hearing containing the information required by Code of Civil Procedure Section 1985(b).

(c) The issuance of a subpoena for the attendance and testimony of a non-party deponent or for a subpoena duces tecum for the production of papers, records, books, and electronically stored information for deposition of a non-party shall be governed by the requirements set forth in Chapter 1 (commencing with Section 2016.010) of Title 4 of Part 4 of the Code of Civil Procedure, excepting the provisions of Section 2020.210, subdivisions (a) and (b) of that code. A subpoena duces tecum issued to a non-party deponent need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it.

(d) Following service of the original subpoena upon the witness or deponent, a copy of the subpoena and an original or copy of the executed proof of service shall be filed with the board.

(e) A motion to quash pursuant to Government Code section 11450.30 shall be made in compliance with Article 1, section 551.19. The motion shall be made within a reasonable time after receipt of the subpoena. The person bringing the motion shall serve copies of the motion on all parties. Notice to all other persons entitled to such notice must also be given or received as may be required by law.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 3050.1(a), Vehicle Code; and Section 11450.30, Government Code.

#### **§ 551.21. Sanctions.**

(a) In any proceeding before the board or an ALJ, no party or representative of a party shall engage in or participate in any actions or tactics that are frivolous, or that are intended to cause or will result in unnecessary delay.

(b) For purposes of this section, "party" or "representative of a party" includes, but is not limited to, a party's officer, director, managing agent, dealer principal or the equivalent, or their attorney.

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the failure to comply with a lawful order or ruling of the board or an ALJ, including a failure to comply timely with a pre-hearing conference order or discovery order.

(2) "Frivolous" includes, but is not limited to:

(A) Totally without merit as there is an absence of reasonable support, under the facts or law, for making or opposing the motion(s), or for the failure to comply; or

(B) For the purpose of harassing an opposing party or counsel.

(C) Actions or tactics, whether consisting of affirmative conduct or failure to act or respond, that will result or do result in unnecessary delay or costs, or are otherwise not in good faith.

(c) A party asserting a violation of this section may, by way of written motion in compliance with Article 1, section 551.19, or oral motion made on the record during reported proceedings, request that the board or an ALJ recommend that the board impose sanctions upon a party, or party's representative, or both.

(d) An ALJ presiding over the matter who believes there has been a violation of this section may on his or her own initiative recommend that the board impose sanctions upon a party, or party's representative, or both.

(e) The board shall not order sanctions, or an ALJ shall not recommend an award of

sanctions, without providing the party or party's representative against whom sanctions are sought notice and an opportunity to be heard.

(f) The board or ALJ shall make determinations as to whether the actions or tactics were frivolous based upon the administrative record and any additional testimony or documentary evidence presented.

(g) Any proposed order recommending sanctions by the ALJ or board order imposing sanctions shall be on the record, or in writing, setting forth the factual findings on which the recommended or board ordered sanctions are based, as well as setting forth the factual findings as to the reasonableness of the sanctions, including the reasonableness of any amount(s) to be paid.

(h) A proposed order recommending an award of sanctions shall be considered by the board members at their next regularly scheduled meeting. A determination not to award sanctions shall not be considered by the board members and is final upon issuance by the ALJ.

(i) The board members' consideration to affirm, reject or modify the ALJ's award of sanctions does not alone constitute grounds for continuance of any previously scheduled dates in the proceeding.

(j) If the motion for sanctions is granted, the board may order or an ALJ may recommend that the party or party's representative or both pay the movant's reasonable expenses and attorney's fees incurred in bringing and pursuing the motion. However, payment of attorney's fees and expenses will not be ordered if:

(1) The movant filed the motion before attempting in good faith to obtain compliance by the opposing party without board action;

(2) The opposing party's noncompliance, nondisclosure, response, or objection was substantially justified; or

(3) Other circumstances make an award unjust.

(k) If the motion for sanctions is denied, the board may order or an ALJ may recommend, after giving an opportunity to be heard, the movant or movant's representative or both to pay the party or party's representative who opposed the motion reasonable expenses and attorney's fees in opposing the motion for sanctions as well as bringing and pursuing the motion for expenses and attorney's fees. However, payment of attorney's fees and expenses will not be ordered if the motion for sanctions was substantially justified or other circumstances make an award unjust.

(l) If the motion for sanctions is granted in part and denied in part, the board may order or an ALJ may recommend that an award of reasonable expenses and attorney's fees incurred in connection with bringing or opposing the motion be apportioned.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Section 128.5, Code of Civil Procedure; Section 11455.30, Government Code; and Section 3050.2, Vehicle Code.

#### **§ 551.22. Adoption and Objection to Proposed Stipulated Decision and Order.**

(a) Upon the filing of a proposed stipulated decision and order with the board, a copy of the proposed stipulated decision and order shall be transmitted by the executive director to each member of the board.

(b) The proposed stipulated decision and order shall be deemed to be adopted by the board unless a member of the board notifies the executive director of the board of an

objection thereto within 10 days after that board member has received a copy of the proposed stipulated decision and order.

(c) If any member of the board gives notice of objection within 10 days of receipt of a copy of the proposed stipulated decision and order, the proposed stipulated decision and order shall be considered by the board at its next meeting to determine whether to adopt or reject it.

(d) Upon receipt by the executive director of a notice of objection, the executive director shall notify the parties named in the petition or protest that there has been an objection and that the matter will be considered by the board at its next meeting. The parties shall also be given a minimum of 10 days prior notice of the time, date, and location of the board meeting at which the proposed stipulated decision and order will be considered.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 3050 and 3050.7, Vehicle Code.