INITIAL STATEMENT OF REASONS

This Initial Statement of Reasons has been prepared relative to the proposal of the California New Motor Vehicle Board ("Board") to amend sections 550, 551.2, and 551.21 and add section 551.22 of Article 1, Chapter 2, Division 1, of Title 13 of the California Code of Regulations.

INTRODUCTION

The Board is an agency within the Department of Motor Vehicles ("Department") with oversight provided by the California State Transportation Agency. The Board consists of nine members, seven are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee. (Veh. Code, §§ 3000 and 3001.)

The duties of the Board including the following:

1. To adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.

2. To hear and determine "appeals" which are filed by applicants for, or holders of, a specified type of occupational license as a result of adverse disciplinary action taken by the Department against the license of such entity. (Veh. Code §3050(b))

3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a "petition", which may be done by any person. (Veh. Code §3050(c))

4. To hear and decide "protests" filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Veh. Code §§ 3050(d), 3060, 3062, 3064, 3065, 3065.1, 3070, 3072, 3074, 3075, and 3076) These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

The Board is a quasi-judicial administrative agency with the independent authority to resolve disputes between franchised dealers and manufacturers or distributors of new vehicles (includes, in part, cars, motorcycles, recreational vehicles, and all-terrain vehicles).

SECTION 550

PURPOSE OF THE REGULATION

The Board proposes to amend Section 550 by adding two definitions that are not currently in the Board's regulations: "proposed stipulated decision and order" and "stipulated decision and order of the board." Additional, non-substantive changes are proposed to clarify several other definitions: Appellant; Declaration; Hearing; and Petitioner. The Reference is updated to reflect Vehicle Code section 3050.7, which pertains to Stipulated Decisions and Orders.

NECESSITY

Section 550, subdivisions (u) and (z) define terms necessary to implement, interpret, and make specific the provisions of Vehicle Code section 3050.7. In a protest or petition, the parties can enter into a written settlement agreement called a "Proposed Stipulated Decision and Order" that the parties agree to submit to the Board for it to become adopted by the Board as a "Stipulated Decision and Order of the Board." If adopted by the Board, the "Stipulated Decision and Order" will have the same effect as if the decision and order flowed from a hearing. Early dispute resolution saves the litigants the cost of proceeding through a merits hearing, eliminates any costs in the court system, and maintains relations in the vital new motor vehicle industry. It is important to define these terms so litigants have a clearer understanding of this dispute resolution mechanism.

SECTION 551.2

PURPOSE OF THE REGULATION

The Board proposes to amend Section 551.2 to authorize an Administrative Law Judge to issue subpoenas. Section 551.2(a) currently authorizes only the Executive Director. The proposed amendment is consistent with Vehicle Code section 3050.1(a) which authorizes both the Administrative Law Judge and the Executive Director to issue subpoenas.

The proposed amendments also clarify that 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.

Lastly, the amendment eliminates the requirement that the original proof of service be filed with the Board following service upon the witness or deponent; a copy is sufficient. Litigants have the option of filing an original or copy.

NECESSITY

The amendments to Section 551.2 of the Board's regulations are necessary to implement, interpret and make specific the provisions of Vehicle Code section 3050.1. They provide clarity to litigants that request a Board-issued subpoena, ensure transparency during discovery by requiring service of subpoena requests on the opposing party or parties, and eliminate the unnecessary filing of an original proof of service of a subpoena if only a copy is available. The proposed amendments seek to streamline this process, add additional transparency to the process, and reduce the burden to litigants appearing before the Board.

SECTION 551.21

PURPOSE OF THE REGULATION

The amendments to Section 551.21 clarify how and under what circumstances a party can seek sanctions. All references to bad faith actions or tactics are deleted because it is open to many interpretations and difficult to define. The existing regulation provides no guidance as to what standard should be applied for evaluating "bad faith" or the absence of "good faith" of a party. Subdivision (c) currently requires a proposed order recommending sanctions to be on the record or in writing, and set forth the factual findings on which the sanctions are based as well as set forth the factual findings as to the reasonableness of the amount(s) to be paid. This would require at least one evidentiary hearing to determine whether to grant or deny the motion for sanctions and potentially a subsequent evidentiary hearing to determine the reasonableness of the amount of sanctions. In practice, the regulation as drafted is not workable; it results in extra expenses to the Board and litigants to hold multiple evidentiary hearings. Furthermore, the current text does not clarify whether an award of sanctions can or cannot include the costs of pursuing the motion for sanctions. It may be that the costs of pursuing the motion for sanctions far exceed the actual request for sanctions. The Reference is updated to reflect Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure.

NECESSITY

At the Board's April 9, 2014, Special Meeting, the Public Members considered Administrative Law Judge Skrocki's "Proposed Order Granting Respondent's Motion to Dismiss for Lack of Jurisdiction" in *McConnell Chevrolet Buick, Inc.* v. *General Motors, LLC* (Protest Nos. PR-2382-14 and PR-2383-14). The motion to dismiss also included a motion for sanctions. This was the first time a motion for sanctions was filed pursuant to Section 551.21. There were a number of problems with the regulation that made it difficult to rule on General Motors' motion without an evidentiary hearing. In light of this, Administrative Law Judge Skrocki thoroughly reviewed the text of the regulation and suggested the proposed amendments to address the ambiguities encountered in the *McConnell* motion.

The amendments to Section 551.21 of the Board's regulations are necessary to implement, interpret and make specific the provisions of Vehicle Code section 3050.2, Code of Civil Procedure section 128.5, Chapter 7 (commencing with Section 2023.010) of Title 4 of Part 4 of the Code of Civil Procedure, and Government Code section 11455.30. As indicated above, the sanctions regulation as drafted is vague, subject to multiple interpretations, and unusable. It does not provide the specificity to allow litigants or the Administrative Law Judge to hear and consider a motion for sanctions without multiple evidentiary hearings which further increases the costs for all concerned. It also does not account for a number of different scenarios pertaining to the award of sanctions or address whether an award of sanctions can or cannot include the costs of pursuing the motion for sanctions.

The Board is a quasi-judicial court that decides very significant disputes that are brought before it. There are millions of dollars at stake in many of these protests and the impact goes beyond the parties to other dealers within or outside of the market area, cities and counties, employees, vendors and most importantly the public. It is paramount that the process proceeds expeditiously and without litigants engaging in any actions or tactics that are frivolous or intended to cause or result in unnecessary delay. A clear and concise regulation that provides the parameters for filing and opposing a motion for sanctions is important to efficient and cost-effective dispute resolution.

The proposed amendments:

1. Prohibit a party or representative of a party from engaging in or participating in any actions or tactics that are frivolous, or that are intended to cause or will result in unnecessary delay. (13 CCR § 551.21(a)) A party or representative of a party is defined. (13 CCR § 551.21(b))

2. Enhance the meaning of actions or tactics to include failure to comply with an Administrative Law Judge issued order or ruling, including a failure to comply timely with a pre-hearing conference order or discovery order. (13 CCR § 551.21(b)(1))

3. Expand the meaning of "frivolous" to include but not be limited to: "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." (13 CCR § 551.21(b)(2)(C)

4. Specify that a motion for sanctions can be a written motion or oral motion made on the record during reported proceedings. (13 CCR § 551.21(c)) An Administrative Law Judge on his or her own initiative can recommend that the Board impose sanctions. (13 CCR § 551.21(c)

5. Allow the party or party's representative against whom sanctions are sought to be provided with notice and an opportunity to be heard. (13

CCR § 551.21(e))

6. Require determinations that actions or tactics are frivolous be based upon the administrative record or any additional testimony or documentary evidence presented. (13 CCR § 551.21(f))

7. Clarify that a Board order imposing sanctions or an Administrative Law Judge proposed order recommending sanctions set forth factual findings on which the sanctions are based as well as set forth factual findings as to the reasonableness of the sanctions, including the reasonableness of any amount(s) to be paid. (13 CCR § 551.21(g))

8. Authorize the Board to order or an Administrative Law Judge to 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 for sanctions, if the motion is granted. (13 CCR § 551.21(j))

9. Specify when attorney's fees and expenses will not be ordered even if the motion for sanctions is granted: (a) the movant filed the motion before attempting in good faith to obtain compliance by the opposing party without Board action; (b) the opposing party's noncompliance, nondisclosure, response, or objection was substantially justified; or (c) other circumstances make an award unjust. (13 CCR § 551.21(j)(1)-(3))

10. If the motion for sanctions is denied, authorize the Board to order or an Administrative Law Judge to recommend, after an opportunity to be heard, that the movant or movant's representative or both pay the party or party's representative who opposed the sanctions motion reasonable expenses and attorney's fees incurred in bringing and pursuing the motion for such expenses and attorney's fees. (13 CCR § 551.21(k)) Under this scenario, attorney's fees and expenses will not be ordered by the Board or recommended by the Administrative Law Judge, if the motion for sanctions was: (1) substantially justified; or (2) other circumstances make the award unjust. (13 CCR § 551.21(k))

11. Authorize the Board to order or an Administrative Law Judge to recommend that an award of reasonable expenses and attorney's fees incurred in connection with bringing or opposing the motion for sanctions be apportioned if the motion is granted in part and denied in part. (13 CCR § 551.21(l))

SECTION 551.22

PURPOSE OF THE REGULATION

The Board proposes to add Section 551.22 to formalize the procedure for the Board to adopt or object to a Proposed Stipulated Decision and Order submitted by the parties. 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 is not formalized.

NECESSITY

The addition of Section 551.22 is necessary to implement, interpret and make specific the provisions of Vehicle Code section 3050.7. For Article 4 (cars, motorcycles, ATVs and heavy duty trucks) and most recently Article 5 (recreational vehicles) protests or petitions, the parties can enter into a written settlement agreement that the parties agree to submit to the Board for it to become adopted by the Board as a "Stipulated Decision and Order of the Board." If adopted by the Board, the "Stipulated Decision and Order" will have the same effect as if the decision and order flowed from a hearing.

Upon receipt of a Proposed Stipulated Decision and Order from the parties, the legal staff reviews the document and prepares a summary that the Executive Director transmits to the members of the Board. The Proposed Stipulated Decision and Order is deemed to be adopted by the Board unless a member notifies the Executive Director of an objection within 10 days of the member's receipt of the Proposed Stipulated Decision and Order.

In practice, if a Board Member objects to the Proposed Stipulated Decision and Order, the matter is put on the agenda for consideration at the next regularly scheduled Board meeting. This procedure has not been formalized in a regulation. The proposed amendments have been drafted to parallel the treatment of petitions that are objected to upon first consideration. (13 CCR § 557)

Subdivision (a) of Section 551.22, reiterates that upon the filing of a Proposed Stipulated Decision and Order with the Board, a copy is sent by the Executive Director to each member of the Board. This is consistent with Vehicle Code section 3050.7.

Consistent with Vehicle Code section 3050.7, subdivision (b) of Section 551.22 also reiterates that the Proposed Stipulated Decision and Order is deemed adopted by the Board unless a member of the Board notifies the Executive Director of an objection within 10 days after the member's receipt thereof.

Subdivision (c) of Section 551.22 formalizes the procedure for a member's objection to a Proposed Stipulated Decision and Order and is patterned after an objection to a petition upon first consideration. If a member timely objects, the

Proposed Stipulated Decision and Order will be considered by the Board at its next meeting to determine whether to reject or adopt it.

Subdivision (d) of Section 551.22 provides for notice to the parties of the objection and that the matter will be considered by the Board at its next meeting. Consistent with the Bagley-Keene Open Meeting Act (Gov. Code § 11125(a)), the parties are be given a minimum of 10 days' notice prior to Board meeting. This is also patterned after an objection to a petition on first consideration.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

The Board has determined that the proposed regulations will not have an impact on the creation of new jobs or businesses, the elimination of any jobs or existing businesses, or the expansion of businesses currently doing business in California. The proposed regulations only impact licensed new motor vehicle dealers, manufacturers, and distributors within the Board's jurisdiction that file a Protest, Petition or Appeal with the Board.

BENEFITS OF PROPOSED REGULATIONS:

Case management is being clarified for litigants that appear before the Board to have the information necessary to effectively represent themselves or their clients. This means the Board will continue to quickly and economically resolve statutorily enumerated disputes between new motor vehicle dealers (franchisees) and their manufacturers or distributors (franchisors). The Board keeps these types of cases from further clogging our already congested courts. Additionally, the Board issues uniform orders and decisions throughout California thereby allowing franchisors and their dealers to conduct their business in compliance with California law. Lastly, the Consumer Mediation Program will continue to efficiently resolve disputes between members of the public and any new motor vehicle dealer, manufacturer, or distributor at no cost to the consumer.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Board relied on the following documents in drafting and proposing the adoption of the proposed regulations:

(1) Memorandum dated December 19, 2013 from William Brennan and Robin Parker to the Policy and Procedure Committee regarding the Consideration of Proposed Regulations;

(2) Memorandum dated November 7, 2014 from William Brennan and Robin Parker to the Policy and Procedure Committee regarding the Consideration of Revisions to Proposed Regulatory Amendments; and

No other technical, theoretical, and/or empirical studies or reports were relied upon in drafting the proposed regulations.

REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

Prior to the publication of this notice, the Board considered and adopted the proposed regulations at a noticed General Meeting held on February 4, 2014. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

Also prior to the publication of this notice, and at a noticed General Meeting held on December 11, 2014, the Board considered potential amendments to the regulations that are the subject of this rulemaking action. Ten days prior to the meeting, a detailed agenda including the topic of potential amendments to the regulations that are the subject of this rulemaking action was mailed to all individuals and entities on the Board's Public Mailing list, Electronic Public Mailing list, and website subscription list. The agenda was also posted on the Board's website.

No comments by the public were received at the February 4, 2014, or December 11, 2014, General Meetings, and no further public discussion was held prior to publication of the notice.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Board has determined that the proposed regulations will have no effect on small businesses. This determination was made because no small businesses are legally required to comply with the regulation, are legally required to enforce the regulation, or derive a benefit from or incur an obligation from the enforcement of the regulation.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

There are no associated costs with the proposed regulatory amendments; they clarify case management procedures for franchised new motor vehicle dealers and their franchisors (new motor vehicle manufacturers or distributors) who choose to file a protest, petition or appeal with the Board.