INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the California New Motor Vehicle Board ("Board") to amend sections 550, 551.2, 551.11, and 551.12 and add sections 551.19, 551.20, 551.23, 551.24, and 551.25 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 Business, Transportation and Housing Agency. The Board consists of nine members, seven of who 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 include 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 specified occupational licensees within the new motor vehicle industry 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, and 3065.1). 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 independent authority to resolve disputes between franchised dealers and manufacturers or distributors of new

vehicles (includes in part motorcycles, recreational vehicles, and all-terrain vehicles).

SECTION 550

PURPOSE OF THE REGULATION

The amendments to Section 550 would add a number of definitions that are not currently in the Board's regulations including: administrative law judge; affidavit; appeal; appellant; day; declaration; electronic; electronically stored information; hearing; motion(s); papers; petition; protest; and service. Existing definitions would be enhanced with appropriate statutory references. The amendments propose adding language that all of the definitions in Section 550 are supplementary to and do not replace those found in the Vehicle Code and other applicable laws and regulations. These amendments will make it easier for litigants to appear before the Board.

NECESSITY

The amendments to section 550 of the Board's regulations are reasonably necessary to ensure that the litigants that appear before the Board or would like to have the information necessary to effectively represent themselves or their clients. Without clear definitions, this situation creates uncertainty and increases the parties' legal fees in addition to increasing the time and money spent by the Board staff and administrative law judges.

SECTION 551.2

PURPOSE OF THE REGULATION

The amendments to Section 551.2 clarify the Board's issuance of subpoenas, update obsolete statutory references when the California Civil Discovery Act was reorganized, and reference electronically stored information (Section 1985.8 of the Code of Civil Procedure). The proposed amendments also require service of the request for subpoena on counsel and clarify service of the subpoena. Lastly, subdivision (e) is added to encompass motions to quash consistent with the Administrative Procedure Act and the Office of Administrative Hearings regulations (1 CCR § 1024). These amendments will make it easier for those who require the issuance of a Board subpoena or need to quash a subpoena.

NECESSITY

The amendments to section 551.2 of the Board's regulations are reasonably necessary to ensure litigants that appear before the Board know how to request a

deposition or hearing subpoena for testimony and/or the production of documents. Most of the Board's cases are resolved prior to the parties conducting depositions or having a merits hearing, therefore many of the litigants are not familiar with the subpoena process. The proposed regulations will provide those litigants that are unfamiliar with the process better guidance. Unlike the civil courts, the Board controls discovery and litigants must request issuance of a subpoena from the Board as provided in Vehicle Code section 3050.1.

SECTION 551.11

PURPOSE OF THE REGULATION

The amendments to Section 551.11 make grammatical changes and clarify the submission of settlement conference statements. The amendment allows the parties to agree orally or in writing that the statements may only be submitted to the Board for use by the assigned settlement conference judge instead of being served on counsel; these statements would be designated "confidential" by the parties. This proposed amendment is the result of feedback provided by counsel appearing before the Board.

NECESSITY

Many of the matters before the Board are resolved as a result of a Board-conducted settlement conference. The amendments to Section 551.11 would not affect or limit the provisions of Vehicle Code section 3050.4 which gives the Board the authority to conduct settlement conferences. The amendments to Section 551.11 are reasonably necessary to give the parties the option to submit confidential settlement conference statements to the settlement judge that are not served on all other parties thereby promoting a more open statement that may further promote or result in settlement.

SECTION 551.12

PURPOSE OF THE REGULATION

The amendments to Section 551.12 make grammatical changes concerning when the administrative law judge is assigned. The amendments in subdivisions (b)-(f) pertain to peremptory challenges; they further clarify the process and shorten the length of time to file a peremptory challenge. A peremptory challenge is infrequently made at the Board but in the event it is, these amendments provide more concise information on the process and timing.

NECESSITY

The proposed amendments are reasonably necessary to maintain the integrity of Board proceedings and clarify the process for making a peremptory challenge. In order to ensure fairness, Board proceedings must be conducted in such a manner as will avoid any suspicion of bias. A party who believes they cannot have a fair and impartial hearing before an assigned administrative law judge has the right to have another administrative law judge assigned to the matter.

SECTION 551.19

PURPOSE OF THE REGULATION

The addition of Section 551.19 fills a gap in the Board's case management procedures concerning motions. Motions are routinely filed before the Board but there are no regulations that address the format, i.e., oral or written, whether an opposition or reply brief is permissible, or whether the hearings are in-person or telephonic. The proposed regulation clarifies that motions are to be in writing unless made during a hearing while on the record, specifies the format for oppositions and replies to the motion, and that briefing of a motion is by stipulation of the parties or by order of the Board.

Government Code section 11440.30(a) of the Administrative Procedure Act provides that "[t]he presiding officer may conduct all or part of a hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in and to hear the entire proceeding while it is taking place and to observe the exhibits." Subsection (b) goes on to provide that "[t]he presiding officer may not conduct all or part of a hearing by telephone, television, or other electronic means if a party objects." The proposed regulation exempts the Board's hearings from this optional provision and clarifies that all motion hearings are conducted by telephone, television, or other electronic means unless otherwise determined by the administrative law judge. However, in the event of live testimony, the proposed regulation provides that the hearing shall be conducted in person before the administrative law judge.

NECESSITY

The proposed regulation is reasonably necessary to ensure that the Board's law and motion procedure is clearly outlined for litigants that appear before it. The proposed regulation clearly delineates that Government Code section 11440.30(b) does not apply to Board proceedings.

SECTION 551.20

PURPOSE OF THE REGULATION

The addition of Section 551.20 fills a gap in the Board's case management procedures; it pertains to the conduct of a hearing and protective orders consistent with Government Code section 11425.20 and Rule 2.550 and 2.551 of the California Rules of Court. The Administrative Procedure Act addresses Protective Orders as does the Office of Administrative Hearing's regulations (1 CCR §§ 1024, 1030). The proposed regulation encompasses motions seeking closure of a hearing, a motion to seal designated portions of the record, and other protective orders. The motions can be oral or written but must be made as early as practicable. The regulation also requires the administrative law judge set forth on the record the facts, legal basis, and findings that support any protective order.

NECESSITY

The proposed regulation is reasonably necessary to establish a procedural mechanism for issuing a protective order to ensure confidential materials remains as such in Board proceedings. Given the types of matters heard by the Board, there is often confidential testimony and/or exhibits that are necessary for the presentation of a case that needs to be protected. This proposed regulation is consistent with the Administrative Procedure Act.

SECTION 551.23

PURPOSE OF THE REGULATION

The addition of Section 551.23 ensures that parties and their counsel are aware that language assistance, accommodation for a disability, hearing impairment amplification, and other special accommodations are available at Board proceedings. This regulation is consistent with the Office of Administrative Hearing's regulation concerning the same (1 CCR § 1032). It is also consistent with the Administrative Procedure Act. Additionally, it specifies that an interpreter used at the hearing must have an oath on file with the Superior Court and be certified and registered in accordance with the Government Code. To allow for flexibility in Board proceedings, if an interpreter certified pursuant to Government Code section 11435.20 cannot be present at the hearing, the Board shall have discretionary authority to provisionally qualify and use another interpreter.

NECESSITY

The proposed regulation is reasonably necessary to establish a procedure for a party or their counsel to request assistance or special accommodation. There is nothing in the Board's regulations that currently provide such a procedure.

SECTION 551.24

PURPOSE OF THE REGULATION

The addition of Section 551.24 would formalize how proof of service can be accomplished in Board proceedings. This regulation is consistent with Section 1013a of the Code of Civil Procedure and current Board practice that provides for service via facsimile and electronic mail.

NECESSITY

The proposed regulation is reasonably necessary to ensure procedural compliance with Board practice and is consistent with Government Code section 11440.20 of the Administrative Procedure Act.

SECTION 551.25

PURPOSE OF THE REGULATION

The addition of Section 551.25 specifies the procedure for a substitution or withdrawal of counsel. This regulation is being proposed to ensure the parties and counsel are aware of the parameters permitting a change or withdrawal of counsel. The regulation does not allow a change of counsel alone to constitute grounds for a continuance of any previously scheduled dates in the proceeding. It is consistent with the Rules of Professional Conduct (Rule 3-700) and Section 284 of the Code of Civil Procedure.

NECESSITY

The proposed regulation is reasonably necessary to provide clarity to litigants and counsel that seek to substitute counsel of record. Occasionally, counsel before the Board finds it necessary to withdraw as counsel of record, the proposed regulation provides the procedure for doing so. The regulation also ensures a party is not involuntarily left without counsel in a proceeding. In order to avoid substitutions or withdrawals of counsel that are for the purpose of delay, the proposed regulation

provides that it does not alone constitute grounds for a continuance of any previously scheduled dates.

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

The Board relied upon the provisions of a New Motor Vehicle Board Policy and Procedure Committee Memorandum dated January 25, 2010, in adopting the proposed regulatory text. No other technical, theoretical, and/or empirical studies, reports, or documents were relied upon in drafting the proposed regulation.

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

Prior to the publication of this notice, the Board considered an initial draft of the proposed regulations at a noticed meeting held on February 11, 2008. At that meeting comments were received by members of the industry. Based on those comments and those of its members, the Board revised the proposed text. The proposed text was adopted at a noticed meeting held on February 4, 2010. Ten days prior to the meeting, a detailed agenda including the consideration of the proposed text of the regulations was mailed to the Board's Public Mailing List and Electronic Public Mailing List, a list of approximately 90-100 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters, and the 38 California New Car Dealers Association Directors. The agenda was also posted on the Board's website. No comments by the public were received at the February 4, 2010, General Meeting, and no further public discussions were 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.