

## 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 553.20, 553.50, 553.70, and 553.72, and add section 553.30 of Articles 1 and 1.5, 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 ("DMV") with oversight provided by the Business, Transportation and Housing 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 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 DMV 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 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 553.20**

### **PURPOSE OF THE REGULATION**

The amendments to Section 553.20 reiterate the new minimum fee per manufacturer or distributor of \$300.00.<sup>1</sup> The amendments also allow the Board to issue fee collection invoices via e-mail or regular mail in lieu of certified mail, return receipt requested.

### **NECESSITY**

The amendments to Section 553.20 of the Board's regulations are reasonably necessary to ensure that the Board continues to provide the most cost-effective fee collection services for the licensees within its jurisdiction and to reaffirm that the minimum fee per manufacturer or distributor is \$300.00; the same fee per year of licensure charged to a new motor vehicle dealer or dealer branch.

## **SECTION 553.30**

### **PURPOSE OF THE REGULATION**

The addition of Section 553.30 allows the Board to consider the failure of a manufacturer or distributor to comply with the provisions pertaining to the Board fee collection (13 CCR §§ 553.10 and 553.20) to be good cause pursuant to Vehicle Code section 3050(c). The fee collection provisions pertain to the submission of the statement of the number of vehicles distributed during the preceding calendar year and the actual payment of the fee as calculated by the Board. This regulation is consistent with Section 553.75 pertaining to the fee collection performed by the Board on behalf of the Department of Consumer Affairs Arbitration Certification Program ("ACP").

### **NECESSITY**

The addition of Section 553.30 of the Board's regulations is reasonably necessary to ensure that the data necessary to calculate the annual Board fee is submitted and the actual fee itself is paid. In the event a licensee fails to comply with these sections, the Board could consider at a noticed Board meeting referring a licensee to DMV to request that DMV take licensing action or that DMV exercise its authority and power to initiate disciplinary proceedings against the motor vehicle license.

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<sup>1</sup> In a separate rulemaking packet, the Board is promulgating an amendment to Section 553 which reinstates the Annual Board Fee per manufacturer and distributor to \$.45 per vehicle with a minimum of \$300.00 and the dealer fee to \$300.00.

## **SECTION 553.50**

### **PURPOSE OF THE REGULATION**

The amendments to Section 553.50 change an inaccurate reference to the Business and Professions Code; the proper reference is Section 472.5(e) not 472(a).

### **NECESSITY**

The amendments to Section 553.50 of the Board's regulations are reasonably necessary to ensure the licensees that pay the ACP fee are aware of the appropriate authority for the Board to collect that fee.

## **SECTION 553.70**

### **PURPOSE OF THE REGULATION**

The amendments to Section 553.70 allow the Board to issue ACP fee collection invoices via e-mail or regular mail in lieu of certified mail, return receipt requested. The amendments also reiterate that the definition of "new motor vehicle" for purposes of this fee collection is contained in Business and Professions Code section 472.5(e). Section 472.5(e) provides: "...'motor vehicle' means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds."

### **NECESSITY**

The amendments to Section 553.70 of the Board's regulations are reasonably necessary to ensure that the Board continues to provide the most cost-effective fee collection services for the licensees within the jurisdiction of the ACP. It also clarifies that the definition of a motor vehicle for ACP fee collection purposes is narrower than that for purposes of the Board's own fee collection.

## **SECTION 553.72**

### **PURPOSE OF THE REGULATION**

The amendment to Section 553.72 corrects the Board's zip code.

## **NECESSITY**

The amendment to Section 553.72 of the Board's regulations is reasonably necessary to ensure those licensees who pay the ACP fee have the Board's correct zip code to remit those fees.

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

The Board relied upon Policy and Procedure Committee Memorandums dated November 10, 2010, and January 18, 2011, 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 and adopted the proposed regulations at a noticed meeting held on December 3, 2010. Section 553.20 was revised by the staff due to the proposed reinstatement of the annual Board fee to \$.45 per vehicle with a minimum of \$300.00 for manufacturers and distributors. To reflect this reinstatement, the revised text for Section 553.20 was considered and adopted by the Board at a noticed meeting on February 4, 2011. Ten days prior to the meetings, 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 37-38 California New Car Dealers Association Directors. The agendas were also posted on the Board's website. No comments by the public were received at the December 3, 2010, or February 4, 2011, General Meetings, 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 to the licensees the Board collects fees from.