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 553 and 553.20 of Article 1 of Chapter 2 of 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).

PURPOSE OF THE REGULATIONS - SECTION 553

The proposed amendments to subdivision (a) of section 553 would raise the amount paid (from $300 to $400) to the Department by a new motor vehicle dealer or dealer branch for issuance or renewal of its license. This annual fee has been at its current level of $300 since March 30, 2012.

The proposed amendments to subdivision (b) of section 553 would raise the annual fee paid to the Board by a new motor vehicle manufacturer or distributor by raising the numerical coefficient, on which the fee is based, from $0.45 to $0.60 per new motor vehicle that was sold, leased or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year. The coefficient has been at its current level of $0.45 since March 30, 2012.

Subdivision (b) of section 553 currently limits, to $300, the minimum annual fee paid to the Board by a manufacturer or distributor. The proposed amendments to subdivision (b) would also restrict the $300 minimum annual fee to each manufacturer or distributor that distributes 1 to 250 vehicles sold, leased or otherwise distributed as described above. Similarly, the proposed amendments to subdivision (b) would restrict, to $450, the minimum annual fee to each manufacturer or distributor that distributes 251 to 806 vehicles sold, leased or otherwise distributed as described above. The $300 minimum annual fee limitation has been at its current level since March 30, 2012, but applied to all manufacturers and distributors that sold, leased or otherwise distributed less than 666 vehicles ($.45 multiplied by 666 vehicles). The $450 minimum annual fee limitation is new and based on volume of sales.

The Board now must confront the problem that the proceeds generated by the currently authorized annual fees are insufficient to fully fund the Board’s activities, as required by Vehicle Code section 3016.

PURPOSE OF THE REGULATIONS - SECTION 553.20

Section 553.20 specifies the methods for calculating the annual fees described above. The proposed amendments to section 553.20 aim to avoid any misunderstanding in connection with the calculation of fees, by repeating the identical minimum fee limitations, of $300 and $450 as described in detail above, into the portion of section 553.20 that describes the method for calculating the annual fee paid to the Board by a manufacturer or distributor of new motor vehicles sold, leased or otherwise distributed in California to consumers of such new motor vehicles during the preceding calendar year.

NECESSITY

Vehicle Code section 3016 authorizes the Board to charge a fee to new motor vehicle dealers and other licensees under its jurisdiction in an amount sufficient to fully fund the Board's activities.

Historically, the Annual Board Fee per manufacturer or distributor has been $.45 per vehicle with a minimum of $300 and the dealer fee has been to $300. In an effort to reduce the Board's excessive surplus, the Annual Board Fee was reduced to $0 in 2000. Those fees were reinstated in 2001 and ultimately reduced in 2002 to $.338 per vehicle with a minimum fee of $225 per manufacturer or distributor and the dealer fee was reduced to $225. This fee structure was in place for nine years from 2002-2011.

The reduced fees coupled with the economic downturn of 2007-2008, made it necessary for the Board to supplement its annual income with its cash reserve. In 2011, the Board conservatively forecasted continued slow growth and recovery in the new motor vehicle industry. In that connection, the Annual Board Fee per manufacturer or distributor was reinstated from $.338 to $.45 per vehicle with a minimum of $300 instead of $225, and the dealer fee was reinstated from $225 to $300. This fee reinstatement became effective on March 30, 2012.

However, the new motor vehicle industry has grown at a significantly lower rate than forecasted. Therefore, based on the Board's current assessment of the condition and expected growth rate of the new motor vehicle industry, if the subject fees remain at current levels, the Board will lack funds sufficient to enable the relevant Board activities, and by the end of the 2016-2017 fiscal year, the Board's cash reserve will be entirely depleted.

The Board's fixed expenses have not fluctuated significantly during the past four years. Other expenses have fluctuated no more than about $60,000, largely due to varying expenses for Administrative Law Judges, Attorney General representation, and shorthand reporter services. Each of those items varies according to the nature and extent of litigation activity involving the Board.

ECONOMIC IMPACT ASSESSMENT/ANALYSIS

IMPACT ON JOBS/NEW BUSINESSES:

The Board has determined that the proposed regulations will not have a significant 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. The products within the Board's jurisdiction include, in part, cars, on-road motorcycles and motor driven cycles, ATVs, low-speed vehicles, recreational vehicles, refuse trucks, heavy duty trucks, and off-highway motorcycles subject to identification. There are approximately 2,200 such entities within the Board's jurisdiction that would be subject to the proposed regulations increasing the annual Board fee. The Board is fully funded by those licensees within its jurisdiction.

BENEFITS OF PROPOSED REGULATIONS:

The fees are being increased so the Board continues to fully fund its operations as required by Vehicle Code section 3016, which in turn benefits California's vitally important automotive/vehicle industry. 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) A Fiscal Committee Memorandum dated January 16, 2013, which analyzed sales of new motor vehicles in 2011-2012, projected new motor vehicle sales for 2013-2015, and analyzed options for amendments to sections 553 and 553.20;

(2) A Fiscal Committee Memorandum dated February 27, 2013, which analyzed sales of new motor vehicles in 2011-2012, projected new motor vehicle sales for 2013-2015, and analyzed options for amendments to sections 553 and 553.20; and

(3) The January 2013, California Auto Outlook, sponsored by the California New Car Dealers Association.

(4) The Economic and Fiscal Impact Statement dated May 21, 2013.

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

The Board relied upon the following historical documents for background information on its annual fee collection:

(1) Fund Condition Statement and charts, staff prepared revenue projections, and a February 1, 1999, Memorandum from Larry Holcomb, Department of Motor Vehicles, Budget and Analysis Office.

(2) Staff prepared revenue projections for fiscal year 2000-2001and the Fund Condition Statement for fiscal years 1998-1999 and 2000-2001.

(3) November 15, 2000, Fiscal Committee Memo and projections.

(4) January 19, 2011, Fiscal Committee Memo, that contained a 17-year fiscal summary (fiscal year 1990-1991 through 2009-2010) along with alternative annual fee projections for five years.

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

Prior to the publication of this notice, and at a noticed General Meeting held on January 22, 2013, 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.

Also prior to the publication of this notice, the Board considered and adopted the proposed regulations at a noticed General Meeting held on March 13, 2013. 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, comprising approximately 60-65 individuals, entities and governmental agencies who have requested notification by the Board of pending Board matters. The agenda was also posted on the Board's website.

No comments by the public were received at the January 22, 2013, or March 13, 2013, General Meetings, and no further public discussion was held prior to publication of the notice. No other alternatives were presented to or considered by the Board.

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 minimal effect on small businesses. The proposed regulations modestly raise fees. The only reasonable alternative to the proposed regulatory action that would lessen the anticipated minimal impact on small business is to reduce staff and operating expenditures of the Board. These alternatives have been and continue to be implemented. The Board's activities are funded by revenues that are dependent upon the vitality of the new motor vehicle industry. During previous years when sales rates of new motor vehicles were robust, the Board was able to create an adequate cash reserve. As indicated above, the Board was able to waive all Board fees for all manufacturers, distributors, and dealers for one year. The Board then reduced the fees paid by the industry for nine years prior to reinstating them to their present level.

Since the economic downturn starting in 2007-2008, the Board has judiciously used its cash reserve to supplement annual income. (In 2006-2007, Board fees collected from manufacturers and distributors in California were $864,000, compared to $416,000 in 2010-2011, and $436,180 in 2011-2012. Similarly, in 2006-2007, Board fees collected from dealers in California were $959,407, compared to $693,500 in 2010-2011, and $609,589 in 2011-2012.) The Board must now assimilate to the continued slow growth and recovery in the new motor vehicle industry. Thus, if action is not taken now, the Board's cash reserve will be entirely depleted by the end of the 2016-2017 fiscal year. Conversely, if the proposed regulations are adopted, the Board expects that the benefits of the proposed regulations will be the continued, fully funded operations of the Board.

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

The proposed regulations would not have a significant statewide adverse economic impact directly affecting business. The proposed regulations raise fees by very modest amounts. The fees were reduced in 2002 to lessen the Board's surplus and that goal was achieved. The fees were reinstated in 2012 in an attempt to rebuild the Board’s finances in the wake of the financial down-turn of 2007-2008. Unfortunately, the 2012 fee reinstatement, in light of diminished new motor vehicle sales, failed to provide income sufficient to fully fund the Board’s operations.