

STATE OF CALIFORNIA



## MEMO

To : EXECUTIVE COMMITTEE  
RAMON ALVAREZ C., CHAIR  
BISMARCK OBANDO, MEMBER

Date: May 1, 2012

From : WILLIAM BRENNAN *WB*  
ROBIN PARKER *RP*

Subject: REPORT ON NON-SUBSTANTIVE CHANGES TO THE PROPOSED REGULATORY TEXT OF SECTIONS 553, 553.10, 553.20, 553.30, 553.50 and 553.70 OF TITLE 13 OF THE CALIFORNIA CODE OF REGULATIONS

At the April 26, 2002, General Meeting, the members adopted the following policy concerning promulgating regulations:

The Board will delegate to the Executive Director the ministerial duty of proceeding through the rulemaking process in compliance with the Administrative Procedure Act. All substantive changes to the proposed text suggested by Board staff, the public, or the Office of Administrative Law will be brought before the members at the next meeting. Non-substantive changes suggested by the Office of Administrative Law or staff will be submitted to the Executive Committee for consideration and ultimately reported to the Board at the next meeting.

Office of Administrative Law Staff Counsel reviewing the Board's final fee collection rulemaking packet suggested non-substantive changes to the proposed regulatory text. While reviewing these suggestions, Board staff noted that the reference in Sections 553 and 553.10 were inaccurate. These non-substantive changes were approved by the Executive Committee and are summarized as follows (see attached text of regulations with non-substantive changes highlighted in yellow):

### **Section 553: Annual Board Fee.**

The reference section was corrected to eliminate the reference to Business and Professions Code section 472.5 as this pertains to the Arbitration Certification Program fee collection and not the annual Board fee collection.

**Section 553.10: Statement of Number of Vehicles Distributed.**

The reference section was corrected to eliminate the reference to Business and Professions Code section 472.5 as this pertains to the Arbitration Certification Program fee collection and not the annual Board fee collection. The correct reference, Vehicle Code section 3016, was added.

**Section 553.20. Determination of Annual Board Fee.**

The reference section was corrected to eliminate the reference to Business and Professions Code section 472.5 as this pertains to the Arbitration Certification Program fee collection and not the annual Board fee collection. The correct reference, Vehicle Code sections 3016 and 3050(a) were added.

**Section 553.30. Noncompliance.**

The word "section" was made singular.

**Section 553.50. Obligation to Comply.**

The subsection references to Business and Professions Code section 472.5 were eliminated to avoid the problem of the accuracy of Reference Citations being dependent on subsections listed by just listing the statute and not any particular subsections of it.

**Section 553.70. Payment of Fees.**

The Board sought to provide invoices via e-mail or regular mail for the fee collection done on behalf of the Department of Consumer Affairs, Arbitration Certification Program. However, absent legislation, the Board cannot make this change through rulemaking. Therefore, the language in Section 553.70 has been restored in this regard.

This matter is being agendized for information only at the May 22, 2012, General Meeting.

If you have any questions or require additional information, please do not hesitate to contact me at (916) 324-6197 or Robin at (916) 323-1536.

Attachment: as stated

**§ 553. Annual Board Fee.**

(a) Pursuant to section 11723 of the Vehicle Code, every applicant for a license as a new motor vehicle dealer or dealer branch, and every applicant for renewal of a license as a new motor vehicle dealer or dealer branch, shall pay to the department for each issuance or renewal of such license, the sum of \$300.00, per year of licensure, in addition to all other fees now required by the Vehicle Code.

For the purposes of this section, a dealer or dealer branch which is enfranchised to sell both new motorcycles and new motor vehicles other than motorcycles shall be subject to a licensing fee for sales of motorcycles and a licensing fee for sales of motor vehicles other than motorcycles.

(b) Pursuant to section 3016 of the Vehicle Code, every new motor vehicle manufacturer and distributor shall pay to the Board an annual fee of \$.45 per new motor vehicle distributed by the manufacturer or distributor which was sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year, provided, however, that the fee to be paid by each manufacturer or distributor shall not be less than \$300.00.

The board may waive fees for a new motor vehicle manufacturer or distributor licensed in California, based on a determination that the manufacturer or distributor either does not sell vehicles in California or does not have an independent dealer or dealer branch in California.

Note: Authority cited: Section 3050(a), Vehicle Code. Reference: Sections 11723 and 3016, Vehicle Code; and Section 472.5(b), Business and Professions Code.

**§ 553.10. Statement of Number of Vehicles Distributed.**

(a) All manufacturers and distributors of new vehicles (as defined in section 430 of the Vehicle Code) are required to file a written statement with the Board on or before May 1 of each calendar year. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles;

(3) The name and business address of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) If the information required by subdivision (a) is not received by the Board within the applicable time period or it is determined by the Board that the information that is received is substantially inaccurate as compared to the registration information derived from the records of the Department of Motor Vehicles, it shall be presumed that the number of new motor vehicles sold, leased, or otherwise distributed in this state by or on behalf of the non-reporting entity during the preceding calendar year is equal to the total number of new registrations during the period in question of all vehicles manufactured or distributed by the non-reporting entity as derived from the records of the Department of Motor Vehicles.

Note: Authority cited: Section 3050(a) and 3016, Vehicle Code. Reference: Section 3016, Vehicle 472.5(b) and (c)(2), Business and Professions Code.

**§ 553.20. Determination of Annual Board Fee.**

Upon receipt of the information required by Section 553.10(a), or as determined by Section 553.10(b), the Board shall calculate the Annual Board Fee to be paid by each ~~manufacture~~, manufacturer and distributor by multiplying the annual fee per vehicle (as set forth in Section 553(b)) by the number of new motor vehicles distributed by the manufacturer or distributor in the preceding calendar year provided, however, that the fee to be paid by each manufacturer or distributor shall not be less than \$300.00. The Board shall thereafter send a written notice by regular mail or electronic-mail certified mail, return receipt requested, to each manufacturer and distributor stating the number of new motor vehicles distributed by the manufacturer or distributor and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of receipt of the notice.

NOTE: Authority cited: Section 3050(a) and 3016, Vehicle Code. Reference: Section 3050(a) and 3016, Vehicle Code 472.5(b), (c)(1) and (c)(2), Business and Professions Code.

**§ 553.30. Noncompliance.**

The New Motor Vehicle Board may consider any failure of a manufacturer or distributor to comply with any provisions of Article 1, Sections 553.10 or 553.20 to be good cause to exercise its authority pursuant to Vehicle Code Section 3050(c).

Note: Authority cited: Sections 3016 and 3050(a), Vehicle Code. Reference: Section 3050(c), Vehicle Code.

**§ 553.50. Obligation to Comply.**

(a) All manufacturers, manufacturer branches, distributors and distributor branches of new motor vehicles (as defined in Business and Professions Code Section 472.5(e) ~~472(a)~~) are required to file a written statement with the New Motor Vehicle Board on or before May 1 of each calendar year. The statement shall include:

(1) The number of new motor vehicles distributed by the manufacturer or distributor which were sold, leased, or otherwise distributed in California to a consumer of such new motor vehicles during the preceding calendar year;

(2) The name and business address of other manufacturers and distributors who are required to submit a statement reporting the distribution of the same new motor vehicles; and

(3) The business address and name of the person or persons authorized to receive notices on behalf of the manufacturer or distributor.

(b) Payment of the fees pursuant to Business and Professions Code Section 472.5 shall be the responsibility of the manufacturer or distributor which authorizes a retail seller, including a dealer, franchisee, or lessor (as those terms are defined in the Vehicle Code), to sell, lease, or otherwise distribute the new motor vehicles.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b) and (f), Business and Professions Code; and Sections 285, 331.1 and 372, Vehicle Code.

**§ 553.70. Payment of Fees.**

The New Motor Vehicle Board shall determine the fee to be assessed per vehicle by dividing the dollar amount necessary to fully fund the certification program for the Arbitration Certification Program by the number of new motor vehicles sold, leased, or otherwise distributed in California during the preceding calendar year. For calendar year 2010, the fee shall be \$.989 per vehicle.

Upon receipt of the information required by Section 553.50(a), or as determined by section 553.60, the New Motor Vehicle Board shall send a written notice by certified mail, return receipt requested, ~~regular mail or electronic mail~~ to manufacturers and distributors subject to the fee assessment stating the number of new motor vehicles (as defined in Business and Professions Code Section 472.5(e)) distributed by the manufacturer or distributor and the amount of the fee to be paid.

Payment of the fee shall be made to the New Motor Vehicle Board no later than thirty (30) days after the date of receipt of the notice.

NOTE: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b), (c) and (e), Business and Professions Code.

**§ 553.72. Transmittal of Fees by Mail.**

No penalty shall be imposed for delinquent payment of any fee required to be paid under this article in the event any instrument for effective payment of such fee is placed in the United States mail or in any postal box maintained by the United States Postal Service with sufficient identification, in an envelope with postage thereon prepaid and addressed to the New Motor Vehicle Board, 1507 21st Street, Suite 330, Sacramento, California, 9584411 prior to the date the fee becomes delinquent.

Note: Authority cited: Section 472.5(f), Business and Professions Code. Reference: Sections 472.5(b) and (d), Business and Professions Code.