

# Regulatory Analysis Form

This space for use by IRRC

2001 MAY 14 AM 11:45

REVIEW COMMISSION



(1) Agency  
 Department of State, Bureau of Professional and Occupational Affairs, State Board of Vehicle Manufacturers, Dealers and Salespersons

(2) I.D. Number (Governor's Office Use)

16A-602

IRRC Number: 2200

(3) Short Title  
 General Revisions

(4) PA Code Cite  
 49 Pa. Code §§19.1 - 19.28

(5) Agency Contacts & Telephone Numbers  
 Primary Contact: Teresa Lazo-Miller, Counsel  
 State Board of Vehicle Manufacturers, Dealers and Salespersons (717)783-7200  
 Secondary Contact: Joyce McKeever, Deputy Chief Counsel (717)783-7200

(6) Type of Rulemaking (check one)  
 Proposed Rulemaking  
 Final Order Adopting Regulation  
 Final, Proposed Omitted

(7) Is a 120-Day Emergency Certification Attached?  
 No  
 Yes: By the Attorney General  
 Yes: By the Governor

(8) Briefly explain the regulation in clear and nontechnical language.  
 The regulatory amendments are proposed to conform language and licensure classification to the 1996 amendments to the Board of Vehicles Act by the Act of April 19, 1996, P.L. 104.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.  
 The proposed regulatory amendments are adopted under Section 4 of the Board of Vehicles Act (Act), Act of December 22, 1983 (P.L. 306, No. 84) as amended, 63 P.S. §818. 4.

**Regulatory Analysis Form**

**(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.**

**The proposed regulatory changes implement the Act of April 19, 1996, P.L. 104, which amended the Board of Vehicles Act. As the Board is required to carry the Act into effect through its regulations, the changes to the Act mandate that the Board amend its regulations.**

**(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?**

**The current Board regulations are based on the pre-1996 version of the Act. Because many terms have been changed, there is great confusion between the regulations and the current Act.**

**(12) State the public health, safety, environmental or general welfare risks associated with nonregulation.**

**The current regulations, in light of the Act, confuse licensees and the general public.**

**(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.)**

**Licensees, the public and the Board will benefit from the increased clarity of Board regulations.**

## **Regulatory Analysis Form**

**(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)**

**The Board has identified no individuals or groups who will be adversely affected by the proposed regulations.**

**(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)**

**All vehicle dealers will be required to comply with the regulations.**

**(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.**

**Pursuant to Executive Order 1996-1, the Board sent out a draft of the proposed amendment to dealer and industry groups for comment. Only the Pennsylvania Automotive Association commented on the proposed amendment, expressing that the amendment was consistent with discussions PAA had with various state agencies and the Board in 1994.**

**(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.**

**The Board expects that the regulated community will experience no costs or savings associated with the proposed regulation.**

**Regulatory Analysis Form**

**(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.**

**Local governments would not be affected by the regulation.**

**(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.**

**The Board will not incur an increase in administrative costs by implementing the regulation.**

### Regulatory Analysis Form

**(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.**

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
<b>SAVINGS:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Savings</b>						
<b>COSTS:</b>	N/A					
<b>Regulated</b>						
<b>Local Government</b>		N/A	N/A	N/A	N/A	N/A
<b>State Government</b>		N/A	N/A	N/A	N/A	N/A
<b>Total Costs</b>						
<b>REVENUE LOSSES:</b>	N/A	N/A	N/A	N/A	N/A	N/A
<b>Regulated</b>						
<b>Local Government</b>						
<b>State Government</b>						
<b>Total Revenue Losses</b>						

**(20a) Explain how the cost estimates listed above were derived.**

**There are no costs associated with the proposed regulatory amendments.**

## Regulatory Analysis Form

**(20b) Provide the past three year expenditure history for programs affected by the regulation.**

Program	FY -3	FY -2	FY -1	Current FY
Board expenditures	(1997-1998) 1,069,418.64	(1998-1999) 1,191,000.00	(Projected) 1,272,000.00	(Projected) 1,379,000.00
Board revenues	(1997-1998) 444,252.98	(1998-1999) 1,978,228.43	(1999-2000) 621,293.28	(Projected) 1,530,923.54

**(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.**

**There are no costs associated with the proposed amendments.**

**(22) Describe the nonregulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.**

**Because the Board is amending existing regulations, no nonregulatory alternatives were considered.**

**(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.**

**Because the proposed amendments merely conform the regulations to the 1996 amendments to the Act, no alternative regulatory schemes were considered.**

## **Regulatory Analysis Form**

**(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.**

**No federal licensure standards apply.**

**(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?**

**The amendments to the regulations will not place Pennsylvania at a competitive disadvantage. The amendments do not change the substantive law.**

**(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.**

**This regulation will have no effect on other regulations of the Board or other state agencies. However, the Board is also proposing to amend its regulations at §19.18(a)(3)(ii) to permit dealers to display up to five vehicles in a non-graded area (Regulation 16A-604).**

**(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.**

**The Board reviews regulatory proposals at regularly scheduled public meetings each month. Meeting dates for 2001 include: March 8, April 12, May 10, June 4, July 12, Aug. 9, Sept. 13, Oct. 11, Nov. 8, Dec. 13.**

## **Regulatory Analysis Form**

**(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.**

**No changes to reporting, recordkeeping or other paperwork are required by this regulation.**

**(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.**

**The Board has perceived no special needs of any subset of its applicants or licensees for whom special accommodations should be made.**

**(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?**

**The regulation will be effective upon publication in the Pennsylvania Bulletin.**

**(31) Provide the schedule for continual review of the regulation.**

**The Board continuously monitors its regulations.**



FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

2001 MAY 14 AM 11:46

REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

# 2200

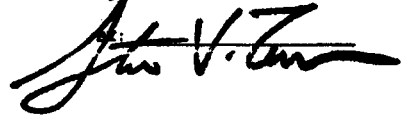
Copy below is hereby approved as to form and legality. Attorney General

Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Copy below is approved as to form and legality. Executive or Independent Agencies.

  
BY: \_\_\_\_\_  
(DEPUTY ATTORNEY GENERAL)

State Board of Vehicle Manufacturers,  
Dealers and Salespersons  
(AGENCY)



MAY 01 2001

DOCUMENT/FISCAL NOTE NO. 16A-602

DATE OF APPROVAL

DATE OF ADOPTION: \_\_\_\_\_

4/12/01  
DATE OF APPROVAL

BY:   
Robert G. Pickerill

(Deputy General Counsel  
~~Chief Counsel,~~  
~~Independent Agency~~  
(Strike inapplicable title))

TITLE: Chairperson  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[ ] Check if applicable  
Copy not approved.  
Objections attached.

[ ] Check if applicable. No Attorney General approval or objection within 30 day after submission.

NOTICE OF PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
STATE BOARD OF VEHICLE MANUFACTURERS,  
DEALERS AND SALESPERSONS  
49 Pa. Code, Sections 19.2, 19.4, 19.12, 19.15-.18, 19.21-.23

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend its regulations at 49 Pa. Code §§19.2, 19-4, 19.12-.13, 19.15-.18 and 19.21-.23, as set forth in Annex A.

### Effective Date

The amendments will be effective upon final publication in the Pennsylvania Bulletin.

### Statutory Authority

The amendments are authorized under Section 4 of the Board of Vehicles Act (Act), Act of December 22, 1983 (P.L. 306, No. 84) as amended, 63 P.S. §818.4.

### Background and Need for the Amendment

By way of the Act of April 19, 1996, P.L. 104, the General Assembly amended the Board of Vehicles Act, 63 P.S. §818.1 et seq. The statutory amendments did not change the substantive law; however, the amendments significantly changed the licensing framework and made many changes in terminology. For example, the license classes of “broker” and “wholesaler” were removed, and the license class of “auction” was created.

These changes are necessary to eliminate confusion among the regulated community because the Board’s current regulations use the terminology and licensure categories of the earlier Act. The proposed amendments will bring the regulations up to date to conform to the statutory amendments.

### Description of Proposed Amendments

The proposed amendment would make the language of the regulations, and their respective licensure categories, consistent with the Act, as amended by the Act of April 19, 1996, P.L. 104. Also, the amendment removes from the regulations those definitions and requirements that appear in the Act.

The proposed amendment would make the following changes:

#### *Proposed Amendments to Section 19.2 Definitions.*

“Act” would be amended to conform to the new numbering of the Act.

“Board” would be amended to delete references to the composition of the Board because the composition of the Board is set by section 3 of the Act, 63 P.S. §818.3, and to delete the statement of the Board’s function because that is defined in section 4 of the Act, 63 P.S. §818.4.

“Camping trailer” would be amended to delete this definition because the term is used nowhere in the Act or regulations.

“Dealer” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Distributor or wholesaler” would be amended to delete this definition because distributor is defined in Section 2 of the Act, 63 P.S. §818.2, and the Act no longer refers to the former class of licensees known as wholesalers.

“Distributor branch” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Distributor representative” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Engaging in the occupation of vehicle salesperson” would be amended to clarify that the display, demonstration and offer for sale of vehicles is part of the business of a vehicle salesperson. The definition is further amended to reflect the intent of the Act that the sale of even one vehicle, not owned by the seller, is engaging in the occupation of a vehicle salesperson.

“Factory branch” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Factory representative” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Interest in vehicles” would be added as a new definition to reflect the Board’s interpretation that the lease of a vehicle is not encompassed in the phrase “interest in vehicles” as used in the definition of “dealer” in Section 2 of the Act, 63 P.S. §818.2.

“Motor vehicle” would be amended to delete this definition because the Act uses the term “vehicle” and defines “vehicle” in Section 2 of the Act, 63 P.S. §818.2.

“Manufacturer” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Retail sale or sale at retail” would be amended to delete this definition because the term is defined in Section 2 of the Act, 63 P.S. §818.2.

“Vehicle salesperson” would be amended to delete this definition because the Act uses the term “salesperson” and defines “salesperson” in Section 2 of the Act, 63 P.S. §818.2.

Proposed Amendment to Section 19.4 Fees.

The proposed deletion of the word “wholesale” from the distributor license application provision reflects the deletion of references to wholesalers in the Act. The proposed deletion of the word “broker” reflects the new definitions of dealer and auction in the Act. The statutory definitions divide between dealers and auctions those activities that were formerly performed by brokers. The references to the “used vehicle lot license application” would be deleted because the Act no longer makes a distinction between the facilities requirements for new and used vehicle dealers.

Proposed Amendment to Section 19.11 License

The Board proposes to delete the reference to “manufacturer or dealer” in Section 19.11 because Section 19.11 is included under a section titled “vehicle salesperson’s license” and, therefore, references to manufacturers or dealers in Section 19.11 are misplaced. In addition, other sections of the regulations address licensure for manufacturers and dealers.

Proposed Amendment to Section 19.12 Application for license

The Board proposes to delete the reference to “manufacturer and dealer” in Section 19.12 because Section 19.12 is under a section titled “vehicle salesperson’s license” and, therefore, references to manufacturers or dealers in Section 19.12 are misplaced. In addition, other sections of the regulations address application for licensure for manufacturers and dealers. The Board proposes to delete the word “motor” from the phrase “motor vehicle” because the Act uses the term “vehicle” and not the term “motor vehicle.”

Proposed Amendment to Section 19.15 Termination of employment.

The Board proposes to delete the requirement that a dealer surrender a salesperson’s license to the Board within 10 days after termination of employment because Section 25 of the Act, 63 P.S. §818.25, requires that the dealer surrender the salesperson’s license within 10 days after termination. This provision in Section 19.15 is, therefore, duplicative.

Proposed Amendment to Section 19.16 Penalties.

The Board proposes to delete Section 19.16 because the penalties for unlicensed practice are set forth in Section 28 of the Act, 63 P.S. §818.28.

Proposed Amendment to Section 19.17 Separate business identity for brokers and dealers.

The Board proposes to delete references to brokers, which are no longer a class of persons licensed under the Act.

Proposed Amendment to Section 19.18 Established place of business for dealers.

The Board proposes to delete references to trailers, semitrailers, recreational vehicles, mobile homes, house trailers or office trailers in Section 19.18(a)(3) because the Act does not distinguish between types of trailers. Instead, Section 2 of the Act, 63 P.S. §818.2, defines "semitrailers and trailers" and "recreational vehicles." The Board proposes to delete references to trailers or semitrailers in Section 19.18(a)(3)(i) because these terms are defined in Section 2 of the Act, 63 P.S. §818.12. In addition, the Board proposes to add manufactured housing to the list of vehicles encompassed by the display area regulation because the Act refers to manufactured housing and imposes licensure requirements similar to vehicle dealers on dealers of manufactured housing.

The Board proposes to delete Section 19(b) relating to the waiver of the certificate of occupancy requirement because the Board does not have the authority to waive a requirement of the Department of Labor and Industry.

Proposed Amendment to Section 19.21 Powers and duties.

The Board proposes to delete Section 19.21, powers and duties of the Board, because the powers and duties of the Board are set forth in section 4 of the Act, 63 P.S. §818.4.

Proposed Amendment to Section 19.22 Investigation.

The Board proposes to amend Section 19.22 by deleting current subsections 1 through 8 and 18 through 23, and renumbering the remaining sections. Sections 1 through 8 are being deleted because they address matters addressed in the Act. The following table sets forth the regulatory sections the Board proposes to delete because the sections are addressed by statutory sections.

49 Pa. Code Section to be Deleted	Corresponding Section of Act, 63 P.S.
§19.22(1)	§818.19(2)
§19.22(2)	§818.19(3)
§19.22(3)	§818.19(4)
§19.22(4)	§818.19(5)
§19.22(5)	§818.19(7)
§19.22(6)	§818.19(8),

§19.22(7)	§818.19(9)
§19.22(8)	§818.19(10)
§19.22(18)	§818.19(12)
§19.22(19)	§§818.19(12) and 818.19(17)
§19.22(20)	§§818.19(12) and 818.19(17)
§19.22(21)	§§818.19(11), 818.19(12), 818.19(17)
§19.22(22)	§§818.19(22), 818.19(23), 818.19(24), 818.19(25)
§19.22(23)	§§818.19(11), 818.19(12), 818.19(17)

Proposed Amendment to Section 19.23 Auto and recreation vehicle exhibitions.

The Board proposes to delete the current Section 19.23 because these items are addressed in sections 32 and 33 of the Act, 63 P.S. §818.32 and 818.33. In addition, the Board proposes to rename Section 19.23, to be titled "Vehicle shows, off-premise sales and exhibitions" and to add a new subsection (a). Section 19.23 would then limit the amount of time an off-premise sale may run, in order to effectuate the intent of the Act that vehicles be sold from licensed premises.

Compliance with Executive Order 1996-1

The Board sent this proposed amendment to dealer and vehicle auction organizations as required under the directives of Executive Order 1996-1. In addition, the Board considered the impact the regulation would have on the regulated community and on public safety and welfare. The Board finds that the proposed amendment addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

### **Sunset Date**

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

### **Regulatory Review**

Pursuant to Section 5(a) of the Regulatory Review Act, the Act of June 30, 1989 (P.L. 73), as amended, 71 P.S. §745.5(a), the Board submitted a copy of this proposed regulation on May 14, 2001, to the Independent Regulatory Review Commission and the Chairpersons of the House Professional Licensure Committee and Senate Consumer Protection and Professional Licensure Committee for review and comment. In addition to submitting the proposed regulation, the Board has provided the Commission and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

If the Commission has any objections to any portion of the proposed regulation, it will notify the Board within ten days after the expiration of the Committees' review period. Such notification shall specify the regulatory review criteria that have not been met by that portion. The Act specifies detailed procedures for review, prior to final publication of the regulation, by the Board, the General Assembly and the Governor of objections raised.

### **Public Comment**

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P.O. Box 2649, Harrisburg, PA 17105-2649, within 30 days following publication of this proposed rulemaking in the Pennsylvania Bulletin.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS  
PART I. DEPARTMENT OF STATE  
Subpart A. Professional and Occupational Affairs  
CHAPTER 19. STATE BOARD OF VEHICLE  
MANUFACTURERS, DEALERS AND SALESPERSONS

GENERAL PROVISIONS

\*\*\*

§19.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Act--The Board of Vehicles Act (63 P.S. §818.1 – 818.[28]37).

Board--The State Board of Vehicle Manufacturers, Dealers and Salespersons [, which shall consist of persons to be appointed by the Governor, which shall aid and assist in the administration of the act].

[Camping trailer (tent trailer)--A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping or travel use.]

[Dealer--A person defined as a new car dealer, or used car dealer in 75 Pa. C.S. Secs. 101-9909 (relating to the Vehicle Code). For the purposes of this act, the term shall also include a person who buys, sells or exchanges house trailers or recreational vehicles at retail, whether or not the activity is a principal or substantial portion of his business.

(i) New car dealer. A person, as defined in this act, actively engaged in and devoting a substantial portion of his time in the business of buying, selling or exchanging new and used motor vehicles, trailers or semitrailers on commission or otherwise, who maintains a salesroom or garage devoted principally to the motor vehicle business and an established place of business, and who holds a contract in writing with a manufacturer, importer or distributor, giving a person selling rights for new motor vehicles, trailers or semitrailers or who is a manufacturer of motor vehicles, trailers or semitrailers or who is an importer or distributor



of new motor vehicles, trailers or semitrailers who holds a contract in writing with a manufacturer of motor vehicles, trailers and semitrailers.

(ii) Used car dealer. A person, as defined in the act, actively and principally engaged in and devoting a substantial portion of his time to the business of buying, selling or exchanging used motor vehicles, tractors, trailers or semitrailers and who maintains a salesroom, garage or used car lot, actually occupied by a person and maintains an established place of business, which established place of business shall include at least a two-bay garage equipped to perform the usual and normal repair and servicing of motor vehicles or the dealer shall by written contract have available to him at all times these repair and servicing facilities and upon which or adjacent thereto is a building or a portion of a building, owned or rented by the person, where his books and records are kept, and which is devoted principally to the motor vehicle business, in which the repair of motor vehicles is subordinate or incidental to the business of buying, selling or exchanging the same.]

\*\*\*

[Distributor or wholesaler--A person, resident or nonresident who in whole or part, sells, or distributes motor vehicles to motor vehicle dealers, or who maintains distributor representatives.]

[Distributor branch--A branch office similarly maintained by a distributor or wholesaler for the same purposes.]

[Distributor representative--A representative similarly employed by a distributor, distributor branch or wholesaler.]

Engaging in the occupation of vehicle salesperson--the display, demonstration, offer for sale or retail sale [during a 12-month period of five or more motor vehicles] of any vehicle not owned by that person.

[Factory branch--A branch office maintained by a person who manufactures or assembles motor vehicles, as defined in this section, for the sale of motor vehicles to distributors, or for the sale of motor vehicles to motor vehicle dealers or for directing or supervising, in whole or part, its representatives.]

[Factory representative--A representative employed by a person who manufactures or assembles motor vehicles or by a factory branch, for the purpose of making or promoting the sale of its motor vehicles, or for supervising or contacting its dealers or prospective dealers.]

Interest in vehicles—Does not include the lease of a vehicle.

[Motor vehicle—Motor vehicles, house trailers and mobile homes, as defined in 75 Pa. C.S. Sec. 102 (relating to definitions) unless specifically exempt by this chapter.]

[Manufacturer—A person, resident or nonresident, who manufactures or assembles motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment which when installed form an integral part of the motor vehicle and which constitutes a major manufacturing alteration.]

[Retail sale or sale at retail—The act or attempted act of selling, bartering, exchanging or otherwise disposing of a motor vehicle to an ultimate purchaser for use as a consumer.]

[Vehicle Salesperson—A person who, for a commission, compensation or other valuable consideration, is employed as a salesman by a motor vehicle or mobile home dealer to sell at retail motor vehicles or mobile homes. This term shall include and apply to the following:

(i) A vehicle salesperson licensed shall be licensed to sell only for one dealer at a time and his license shall indicate the name of the motor vehicle dealer.

(ii) The principal, an officer or a partner of a motor vehicle or mobile home, truck or recreational vehicle dealer if he personally is actively engaged in the retail sale of motor vehicles.

(iii) If a dealer has a controlling or supervisory interest for more than one dealership, he may sell from any one of the dealerships.

(iv) If the dealer has a controlling or supervisory interest for more than one dealership, he may sell from any dealership.]

\*\*\*

**§19.4. Fees.**

Vehicle salesperson license application . . . . .	\$25
Vehicle representative license application . . . . .	25
Vehicle manufacturer license application . . . . .	30
Manufacturer branch license application . . . . .	30
Distributor license application . . . . .	30
Vehicle dealer license application . . . . .	65

Vehicle [broker] <u>auction</u> license application . . . . .	65
Dealer [or broker] branch lot license application . . . . .	65
[Used vehicle lot license application . . . . .	65]
Vehicle salesperson change of employer transfer application . . . . .	25
Business name or post office address change . . . . .	30
Business physical location change . . . . .	60
Verification of licensre . . . . .	15
Reinspection after failure . . . . .	45
Certification of license history . . . . .	25
Biennial renewal - vehicle salesperson licence . . . . .	35
Biennial renewal - vehicle representative license . . . . .	35
Biennial renewal - vehicle manufacturer license . . . . .	100
Biennial renewal - manufacturer branch license . . . . .	70
Biennial renewal - - [wholesale] distributor license . . . . .	70
Biennial renewal - - vehicle [broker] <u>auction</u> license . . . . .	70
Biennial renewal - - dealer [or broker] branch license . . . . .	70
[Biennial renewal - - used vehicle lot license . . . . .	70]

## VEHICLE SALESPERSON'S LICENSE

### §19.11. License.

It shall be unlawful for a person, except as provided in this title, to engage in the occupation of vehicle salesperson [, manufacturer or dealer] within this Commonwealth unless he has secured a license as required under the act.

### §19.12. Application for license.

(a) Application for license as a vehicle [manufacturer, dealer,] salesperson [, wholesaler, distributor branch representative, factory branch representative,] shall be made in writing to the Board, signed by the applicant, designating the business name and address of the [motor] vehicle dealer then employing him or into whose employ he is then about to enter. Applications shall be made upon a form of application prepared by the Board which shall include the recommendation of his employer or prospective employer certifying that the applicant is honest, trustworthy, truthful and of good repute and recommending that a license be granted. In the case of an applicant who is himself a [motor] vehicle dealer, an officer of a corporation which is a [motor] vehicle dealer or a member of a partnership which is a [motor] vehicle dealer, a representative of a bank or sales finance company which has personal knowledge concerning the reputation and fitness of the applicant, shall complete affidavit No.

4 on transfer form or No. 18 on the original application. The form of application shall contain other information as the Board shall require.

(b) A person, resident or nonresident, who, in whole or in part, sells, distributes or exchanges [motor] vehicles to [motor] vehicle dealers within this Commonwealth, is required to be licensed in this Commonwealth as a distributor [~~wholesaler~~] or dealer.

\*\*\*

**§19.15. [Termination of employment.]**

[Within 10 days after termination of employment, the dealer shall surrender to the Board the salesperson's licenses.]

**§19.16. [Penalties.]**

[Whoever engages in the occupation of vehicle salesperson or in the business of vehicle dealer manufacturer, factory branch, distributor branch, factory or distributor representative without being licensed and registered as required by the act or exempted therefrom as provided in the act presents or attempts to use as his own the license of another or gives a false or forged evidence of any kind to the Board or to a member of the Board in order to obtain a license, or uses an expired, suspended or revoked license, or otherwise violates the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be sentenced to pay a fine not exceeding \$100 or undergo imprisonment for a period of not more than 90 days, or both.]

**VEHICLE DEALERSHIP LICENSE**

**§19.17. Separate business identity for [brokers and] dealers.**

Every [licensed brokerage and every] licensed dealership shall have a business identity separate from other businesses owned or operated by the [broker or] dealer.

**§19.18. Established place of business for dealers.**

(a) Criteria. A licensed dealer shall maintain an established place of business that meets the following criteria:

\*\*\*

(3) Display area. The dealership shall have a display area - - whether indoors, outdoors or partly indoors and partly outdoors - - where the public is permitted and invited in the regular course of business to inspect or test drive the vehicles [, trailers, semitrailers, recreational vehicles, mobile homes, house trailers or office trailers] that are being offered for sale, purchase or exchange by the dealership. The display area may not include areas of the dealership premises on which are placed vehicles [, trailers, semitrailers, recreational vehicles, mobile homes, house trailers or office trailers] that are wrecked or damaged, that are awaiting reconditioning or preparation for sale, purchase or exchange, that are being serviced or repaired, that are part of general inventory, or that are otherwise not being offered for sale, purchase or exchange to the public. The display area shall meet the following requirements:

(i) Size. The display area of a dealership that buys, sells or exchanges vehicles [, trailers or semitrailers] shall be large enough for the display of at least five vehicles [, trailers or semitrailers] - - with doors opened - - of the kind that are bought, sold or exchanged by the dealership. The display area of a dealership that buys, sells or exchanges recreational vehicles, manufactured housing and mobile homes [, house trailers or office trailers] shall have a display area of at least 5,000 square feet unless the Act provides otherwise.

(ii) Grading and surfacing. An outdoor display area shall be properly graded. The outdoor display area of a dealership that buys, sells or exchanges [vehicles, trailers, semitrailers or recreational] vehicles shall be surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material.

(iii) Separation from adjacent parking areas. An outdoor display area shall be separated from the parking areas of adjacent businesses and residences by grass strips, ropes and pennants, painted lines or some other conspicuous means of separation.

(iv) Lighting. If a dealership with an outdoor display area intends to be open during evening hours, the display area shall be lighted adequately.

(4) Repairs and ancillary services.

(i) [A dealership that buys, sells or exchanges vehicles, trailers, semitrailers or recreational vehicles shall have one of the following:

(A) A garage or other facility, separate from the display area, that has at least two bays and that is equipped to perform the usual and normal repairs and servicing of the vehicles, trailers, semitrailers or recreational vehicles that it buys, sells, or exchanges.

(B) A written contract - - and attached notarized acknowledgment - - with a garage, licensed to perform State inspections, to have the repairs and servicing provided.

(ii) A dealership that buys, sells or exchanges mobile homes or manufactured housing [, office trailers or house trailers] shall do one of the following:

\*\*\*

[(b) Waiver of Certificate of Occupancy requirement.

(1) A waiver may be granted to a dealer who is experiencing a hardship in obtaining a Certificate of Occupancy, as required by subsection (a)(8), if the dealer has:

(A) Filed a written application for a waiver with the Board.

(B) Applied for a Certificate of Occupancy through the Department of Labor and Industry by March 31, 1988.

(C) Obtained, and filed and copy with the Board, the documentation from the Department of Labor and Industry outlining repairs or construction required in the dealer's facility to obtain the Certificate of Occupancy.

(D) File a sworn affidavit indicating that he is complying with the Department of Labor and Industry's requirements, within the time limit established by the Department of Labor and Industry in the documentation, or under 34 Pa. Code (relating to Labor and Industry).

(2) A dealer who had the Certificate of Occupancy requirement waived for the May 31, 1987 or May 31, 1989 renewals, shall complete the repairs and construction required by the Department of Labor and Industry and obtain the Certificate of Occupancy from the Department of Labor and Industry on or before March 31, 1991. If the Certificate of Occupancy is not issued for the dealership facility, the dealership license will not be renewed until a copy of the Certificate of Occupancy has been filed with the Board.]

## POWERS AND DUTIES OF THE BOARD

[§19.21. Powers and duties.]

[The Board will have power and its duty will be to provide for and regulate the licensing of vehicle salesperson, manufacturers, dealers, wholesalers, distributor branch representatives,

factory branch representatives, and to issue except as otherwise provided a license to engage in the occupations as covered by the act, to an applicant who meets requirements of the act.]

**§19.22. Investigation.**

The Board will investigate on its own initiative or upon the verified complaint in writing of a person, allegations of the wrongful act of a licensee of the act and will have the power to suspend or revoke licenses issued by the Board if, after notice and hearing, the person charged is found guilty of committing or attempting to commit the following acts:

- (1) [Knowingly making a substantial misrepresentation of material facts.
- (2) Knowingly making false promise of a character likely to influence, persuade or induce the sale of a motor vehicle.
- (3) Having within 3 years prior to the issuance of the license then in force or while his current license is in force pleaded guilty, entered a plea of nolo contendere, or been found guilty in a court of competent jurisdiction of this Commonwealth or another state of forgery, embezzlement, obtaining money under false pretenses, extortion, conspiracy to defraud, bribery or other crime involving moral turpitude.
- (4) Having knowingly failed or refused to account for or to pay over monies or other valuables belonging to others which have come into his possession arising out of the sale of motor vehicles.
- (5) Having committed an act or engaged in conduct in connection with the sale of motor vehicles which clearly demonstrates incompetency.
- (6) Having made a material misstatement in application for a motor vehicle salesperson's license.
- (7) Having set up, promoted or aided in the promotion of a plan by which motor vehicles are sold to a person for a consideration, and upon the further consideration that the purchaser agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in the plan, each purchaser being given the right to secure money, credits, goods or something of value, depending upon the number of persons joining in the plan.

(8) Having engaged in the buying, selling, exchanging, trading or otherwise dealing in new or used motor vehicles on Sunday in violation of the Sunday Closing Law, 18 Pa. C.S. Sec. 7365 (relating to trading in motor vehicles and trailers).

(9) (1) Has required a purchaser of new motor vehicle, as condition of sale and delivery of the vehicle, to also purchase special features, appliances, accessories or equipment not desired or requested by the purchaser.

[(10)] (2) Has willfully failed or refused to perform a written agreement with a retail buyer involving the sale of a motor vehicle.

[(11)] Having failed to maintain an established place of business as defined in §19.18(a) (relating to established place of business for dealers).

(12) (3) Having used the words "lease" or "leasing" in a [broker's or] dealer's trade name.

[(13)] (4) Has with intent to sell or in any way dispose of motor vehicles, or with intent to increase the volume of sales of motor vehicles or to induce the public in any manner to enter into an obligation relating thereto, or to acquire title thereto or an interest therein, made, published, disseminated, or caused, directly or indirectly, the same to be made, published, disseminated, circulated or placed before the public, in a newspaper or other publication in the form of a book, notice, handbill, poster, sign, bill circular, pamphlet or letter, or over a radio or television station or other medium of wireless communication, or in another way, similar or dissimilar to the foregoing, an advertisement, announcement, or statement, of any sort regarding the motor vehicles so offered to the public or concerning the quantity, quality, value, merit, use, present or former price, cost, reason for price, motive for sale or concerning the method of pricing, or the possession of rewards, prizes or distinctions conferred, regarding the motor vehicles which advertisement contains an assertion, representation, or statement of fact which is untrue, deceptive or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue, deceptive or misleading.

[(14)] (5) Has advertised a motor vehicle for sale, in a manner indicating that the sale is being made by a private party or household not engaged in the motor vehicle business, unless that advertisement shall affirmatively and unmistakably indicate and state that the seller is a motor vehicle dealer or salesperson and not a private party.

[(15)] (6) Has advertised so as to misrepresent the true nature of his business by the use of the words "manufacturer", "importer" or "wholesaler" or has represented that he is selling at wholesale in any form of sale or advertising unless the motor vehicle dealer is actually



selling at wholesale for the purpose of resale, or unless the motor vehicle dealer is in fact advertising true wholesale prices.

[(16)] (7) Has misrepresented the true nature of the business by the use of the words "sale at wholesale", "sales at wholesale", "wholesale sale", "wholesale prices" or words of similar import containing the word "wholesale" unless motor vehicles listed or sold under the claims are sales to a purchaser for the purpose of resale.

[(17)] (8) Has advertised a motor vehicle for sale and then has refused to show, demonstrate or sell the motor vehicle offered in accordance with the terms of the offer, subject to prior sale.

[(18)] A dealer, new or used car, mobile home or recreational vehicle dealer, who advertises or otherwise holds out to the public that this dealer is selling new motor vehicles for which he does not hold a contract in writing with a manufacturer, importer or distributor giving said dealer authority to sell the motor vehicles will be held to be in violation.

(19) A dealer, new or used car, mobile home or recreational vehicle dealer, who sells new motor vehicles for which he does not hold a contract in writing with a manufacturer, importer or distributor giving said dealer authority to sell these motor vehicles, will be held to be in violation. It is the clear legislative intent as expressed in section 5(2)(xv) and (xvi) of the act (63 P.S. Sec 805 (2)(xv) and (xvi)) (Repealed) that new vehicles may be advertised and sold only by new vehicle dealers having a franchise to sell the vehicles. The purpose to be served by this provision of the act is to protect the public from being misled into believing that they are purchasing from an authorized dealer and thereby being defrauded as to warranty and other rights against the dealer and the manufacturer.

(20) A dealer (used) who sells a new motor vehicle.

(21) A dealer (used) who sells a motor vehicle which has never been registered or titled in the Commonwealth or another state or foreign country under the manufacturer's identification number indicated on the motor vehicle or, if registered or titled within the Commonwealth, the following affidavit by the previous owner of the motor vehicle is not in possession of the dealer.

I, the undersigned, do hereby swear and affirm that the applicable Pennsylvania Sales Tax was paid on the motor vehicle bearing manufacturer's identification number at the time of my application for title.

(22) Failure of a licensee to remit to the Bureau of Sales and Use Tax of the Department of Revenue any sales tax entrusted to the licensee by the purchaser of a motor vehicle.

(i) A licensee may, as an accommodation to a purchaser, act as agent for the purchaser by submitting the check or draft of the licensee in fulfillment of the sales tax obligation of the purchaser; however, the licensee shall advise the purchaser that the vehicle registration and title of the purchaser may be suspended or revoked if the money represented by the check or draft of the licensee is uncollectible upon the Department of Revenue's attempt to negotiate the check or draft. Failure to comply with this requirement shall be a violation of this paragraph.

(ii) If, as an accommodation to a purchaser, the licensee accepts the responsibility of fulfilling the sales tax obligation of the purchaser, the tax shall be remitted to the Bureau of Sales and Use Tax within 10 days after the date of the transfer. Failure to comply with this requirement shall be a violation of this paragraph.

(iii) A licensee is deemed to violate this paragraph if the check or draft of the licensee is uncollectible upon the Department of Revenue's attempt to negotiate the check or draft.

(23)] (9) Having used the word "new" in the trade name, in the advertising, or on the checks or business stationery of a [broker or] dealer who engages only in the sale, purchase or exchange of used vehicles [, trailers, semitrailers, mobile homes, house trailers, office trailers or recreational vehicles].

[(24)] (10) Having used the words "broker" or "brokering" in the trade name, in the advertising, or on the checks or business stationery of a dealer [who does not have a broker's license] or auction.

**§19.23. [Auto and recreational vehicle] Vehicle shows, off-premise sales and exhibitions.**

[(a) Manufacturers, distributors, dealers and salespersons may participate and exhibit motor vehicles at annual expositions in public buildings on Sundays.

(b) At the exhibitions no orders may be written, discounts offered, terms and financing arrangements discussed, nor trade-in estimates given. Any other acts which may be construed as negotiating a sale are also prohibited. Sales representatives may be present at these expositions solely to demonstrate their products and to provide the attending public price lists. Signs may be posted indicating prices and that financing is available. Vehicles may be open for inspection.

(c) Out-of-State manufacturers, distributors, dealers and salespersons may be licensed in the same manner as Commonwealth licensees with the further proviso that the public exhibition facility is to be considered their showroom or lot for the period of the exposition. The producer of the exposition is to be appointed by the licensee, in writing, as its agent for the purposes of accepting legal process and any other legal documents relating to the act including, but not limited to, Sunday sales violations.

(d) Each exhibitor shall provide the attending public with a list of specifications required by the Commonwealth for the licensing of a vehicle offered for sale by the exhibitor.

(e) The producer of the exhibition shall apply for and receive written authorization from the Board at least 90 days previous to the scheduled opening of the exhibition.

(f) Out-of-State manufacturers, distributors, dealers and salesperson wishing to exhibit vehicles shall first obtain licensure from the Board.

(g) In order to present an exhibition at least 20 dealers shall participate, with a minimum of 50 units for display, unless special permission for fewer dealers or vehicles is granted by the Board. The number of dealers and the names of those who intend to participate shall be given to the Board 60 days prior to the date of the show.

(h) Signs shall be prominently posted at the entrance to the exhibition hall, the signs indicating that Sunday Sales are prohibited.]

(a) A vehicle show, off-premise sale or exhibition may not last for more than 14 consecutive days. In order to preclude the operation of an unlicensed branch location, a dealer may not participate in any show or combination of shows at a given location for more than 15 days in any period of 30 days, for more than 30 days in any period of three months or for more than 60 days in any period of twelve months.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF STATE  
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS  
**STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS  
AND SALESPERSONS**

Post Office Box 2649  
Harrisburg, Pennsylvania 17105-2649  
(717) 783-1697

May 14, 2001

The Honorable John R. McGinley, Jr., Chairman  
INDEPENDENT REGULATORY REVIEW COMMISSION  
14<sup>th</sup> Floor, Harristown 2, 333 Market Street  
Harrisburg, Pennsylvania 17101

**Re: Proposed Regulations of the State Board of Vehicle Manufacturers, Dealers  
and Salespersons Pertaining to General Revisions (16A-602)**

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to general revisions.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

Robert G. Pickerill, Chairman  
State Board of Vehicle Manufacturers, Dealers  
and Salespersons

RGP/TLM:kp

Enclosure

c: John T. Henderson, Jr., Chief Counsel  
Department of State  
Albert H. Masland, Commissioner  
Bureau of Professional and Occupational Affairs  
Joyce McKeever, Deputy Chief Counsel  
Department of State  
Christal Pike-Nase, Regulatory Counsel  
Bureau of Professional and Occupational Affairs  
Herbert Abramson, Senior Counsel in Charge  
Bureau of Professional and Occupational Affairs  
Teresa Lazo-Miller, Counsel  
State Board of Vehicle Manufacturers, Dealers and Salespersons  
State Board of Vehicle Manufacturers, Dealers and Salespersons

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 16A-602  
 SUBJECT: State Board of Vehicle Manufacturers, Dealers & Salespersons - General Revisions  
 AGENCY: DEPARTMENT OF STATE

**TYPE OF REGULATION**

- X Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
  - a. With Revisions
  - b. Without Revisions

RECEIVED  
 2001 MAY 14 AM 11:46  
 INDEPENDENT REGULATORY  
 REVIEW COMMISSION

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
5-14-01	<i>[Signature]</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
MAY 14 2001	<i>[Signature]</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
5/14/01	<i>[Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL
5/14/01	<i>[Signature]</i>	LEGISLATIVE REFERENCE BUREAU

May 3, 2001