

Regulatory Analysis Form

This space for use by IRRC

(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-604

IRRC Number: 2311

(3) Short Title

Display

(4) PA Code Cite

49 Pa. Code § 19.18

(5) Agency Contacts & Telephone Numbers

Primary Contact: **Thomas A. Blackburn, Counsel,
State Board of Vehicle Manufacturers, Dealers and
Salespersons (717) 783-7200**

Secondary Contact: **Joyce McKeever, Deputy Chief
Counsel, Department of State (717) 783-7200**

(6) Type of Rulemaking (check one)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Policy Statement

(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 non-technical language.

The final rule-making establishes an exemption to the grading and surfacing requirements for a vehicle display area to allow a dealer to have a non-conforming display area for up to five vehicles where the public is not permitted.

Regulatory Analysis Form

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

The rulemaking is adopted under Sections 2 and 4(9) of the Board of Vehicles Act (63 P.S. §§ 818.2, 818.4(9)).

(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.

No, the rulemaking is not mandated by any federal or state law or court order or any federal regulation.

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

The current regulation regarding dealer display areas unnecessarily restricts the ability of dealers to market vehicles. The rulemaking will ease the display restrictions on vehicle dealers and protect the public by requiring that dealers exclude the public from a non-conforming display area.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

The display lot grading and surfacing requirements protect the public by assuring adequately safe footing where vehicles are displayed for inspection by the public. Requiring dealers to exclude the public from non-conforming areas promotes safety.

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

Vehicle dealers will benefit from the regulation by being permitted to create unique showcase displays for their vehicles. There are approximately 8700 licensed vehicle dealers in the Commonwealth who will be affected by the rulemaking.

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 individual or group who will be adversely affected by the rulemaking.

(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 who display vehicles in a non-conforming area will be required to conform to the regulation.

(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 an exposure draft to the various dealer and industry groups for comment. Pennsylvania Independent Automobile Dealers Association (PIADA) commented that the proposed amendment was consistent with discussions PIADA had with various state agencies and the Board in 1994 and suggested that a licensed dealer be permitted to display up to ten vehicles in non-conforming areas.

(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 anticipates no costs to the regulated community in complying with the guidelines related to the display of vehicles in non-conforming areas.

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.

There are no costs or savings to local governments associated with compliance with the rulemaking.

(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.

There are no costs or savings to state government associated with implementation of the rulemaking.

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 03-04	FY+1 04-05	FY+2 05-06	FY+3 06-07	FY+4 07-08	FY+5 08-09
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

Regulatory Analysis Form

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

Because the regulated community is not required to take any actions to comply with the rulemaking, the Board anticipates that there will be no costs incurred in complying with the rulemaking.

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

Program	FY-3 (FY 00-01)	FY-2 (FY 01-02)	FY-1 (FY 02-03)	Current FY (FY 03-04)
Pa. State Board of Vehicle Manufacturers, Dealers and Salespersons	\$1,379,000	\$1,364,000	\$1,437,000	\$1,587,000

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

The benefits to public safety and consumer protection outweigh any potential minimal expenditures by dealers in complying with the rulemaking.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

The Board considered no non-regulatory alternatives, because the display requirements are already contained in the Board's regulations.

Regulatory Analysis Form

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

The Board received input from PAA and PIADA. The Board considered a variety of numbers of vehicles that could be displayed in a non-conforming area.

(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.

The rulemaking does not overlap or conflict with any federal requirements.

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

The rulemaking will not put Pennsylvania at a competitive disadvantage. On the contrary, the Board's proposal to allow Pennsylvania dealers to showcase up to five vehicles in a non-conforming area will give dealers a competitive advantage over dealers in states that do not permit the display of vehicles in non-conforming areas. For example, dealers must place vehicles offered for sale on a surfaced display area in Ohio (Ohio Admin. Code § 4501:1-3-08), West Virginia (W.Va. Code State R. tit. 91, § 6-2-2.8) and Maryland (Md. Regs. Code tit. 11, § 11.01.02).

(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.

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

The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the second Thursday of each month, at 2601 North Third Street in Harrisburg. More information can be found on the Board's web-site (<http://www.dos.state.pa/vehicle>), or by calling the Board office at (717) 783-1697.

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.

This rulemaking requires no change to reporting, record keeping or other paperwork.

(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 determined that there are 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 final form in the *Pennsylvania Bulletin*.

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

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS
CHAPTER 3. STATE BOARD OF BARBER EXAMINERS
SCHOOLS OF BARBERING

§ 3.103. Fees.

The schedule of fees charged by the Board is as follows:

[Licensing examination for barber—complete	\$87
Licensing examination for barber—practical only	\$87
Licensing examination for barber—theory only	\$87
Licensing examination for barber—endorsement candidate	\$87
Licensing examination for barber teacher—complete	\$87
Licensing examination for barber teacher—practical only	\$87
Licensing examination for barber teacher—theory only	\$87
Licensing examination for barber shop manager	\$87]

[Pa.B. Doc. No. 02-1947. Filed for public inspection November 1, 2002, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Established Place of Business for Dealers

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend § 19.18 (relating to established place of business for dealers) to read as set forth in Annex A.

The proposed rulemaking would amend § 19.18(3)(ii) to permit a licensed vehicle dealer to display up to five vehicles in a nonconforming area that is not open to the public.

Effective Date

The proposed rulemaking will be effective upon final-form publication in the *Pennsylvania Bulletin*.

Statutory Authority

The rulemaking is proposed under section 4(9) of the Board of Vehicles Act (act) (63 P. S. § 818.4(a)(9)).

Background and Need for the Proposed Rulemaking

Section 19.18(3) governs the dealership location's display area where the public is permitted and invited in the regular course of business to inspect or test drive vehicles offered for sale, purchase or exchange by the dealership. Subparagraphs (ii)–(iv) set forth requirements for outdoor display areas.

As a result of the present outdoor display requirements of § 19.18(3)(ii), vehicle dealers have been unable to lawfully display a vehicle in a "showcase" area, such as on the front lawn of the dealership or upon some structure. In today's competitive marketplace, many dealers have expressed an interest in being permitted to create a special, nonconforming display area for one or a few vehicles as a "showcase" for a particular vehicle or vehicles. The Board found the requests reasonable and proposes to amend § 19.18(3)(ii) to permit a dealer to create a "showcase" area for up to five vehicles. To satisfy public safety concerns associated with the grading and surfacing requirements for display lots, the Board proposes to require that a dealer who creates a nonconforming display exclude the public from the nonconforming display area.

Description of Proposed Rulemaking

The Board proposes to add a new sentence to § 19.18(3)(ii) that would permit dealers to display up to five vehicles in an area that does not conform to the grading and surfacing requirements of that section, so long as the public does not have access to the nonconforming area. The proposed exemption would allow dealers to showcase up to five vehicles in an area designed for commercial impact rather than for safe access by the public. The public safety concerns expressed in the act and in § 19.18(3)(ii) are satisfied because the regulation requires that the public may not have access to the nonconforming showcase area.

Compliance with Executive Order 1996-1, "Regulatory Review and Promulgation"

The Board sent this proposed rulemaking to major dealer organizations as required under the directives of Executive Order 1996-1, including the Pennsylvania Automotive Association, the Pennsylvania Independent Automobile Dealers Association (PIADA), the Pennsylvania Manufactured Housing Association and the Pennsylvania Motorcycle Dealers Association. Comments were received which agreed that the Board should authorize the display of vehicles on lawn fronts at dealerships. The PIADA, through its executive director, suggested a licensed dealer be permitted to display up to ten vehicles in nonconforming areas. The Board determined that the area required to display ten vehicles would be too large for the dealer to adequately monitor public access. In addition, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare. The Board finds that the proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on October 17, 2002, the Board submitted a copy of this proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, 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 Teresa Woodall, Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, www.dos.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. CERNIC, Jr.,
Chairperson

Fiscal Note: 16A-604. No fiscal impact; (8) recommends adoption.

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
DEALERSHIP LICENSE**

§ 19.18. Established place of business for dealers.

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 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 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:

* * * * *

(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 shall be surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material. A dealership that otherwise complies with this paragraph may display up to five vehicles without regard for the grading or surfacing where those vehicles are displayed, so long as customers are not permitted to be present in the nonconforming area.

* * * * *

[Pa.B. Doc. No. 02-1948. Filed for public inspection November 1, 2002, 9:00 a.m.]

[49 PA. CODE CH. 19]**Vehicle Auction License**

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to add §§ 19.19 and 19.20 (relating to standards of licensure for retail or public auction; and standards of licensure for wholesale auction) to read as set forth in Annex A. The proposed rulemaking would establish requirements for retail or public vehicle auctions and wholesale vehicle auctions.

Effective Date

The proposed rulemaking will be effective upon publication of final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The rulemaking is proposed under section 4(9) of the Board of Vehicles Act (act) (63 P. S. § 818.4(a)(9)).

Background and Need for the Proposed Rulemaking

The proposed rulemaking would establish requirements for retail or public vehicle auctions and wholesale vehicle auctions and would clarify the statutory restrictions on activities that may be engaged in by persons holding an auction license. The proposed rulemaking is necessary to bring the Board's regulations into conformity with changes made to the act by the act of April 19, 1996 (P. L. 104, No. 27) (Act 27).

Brokering activity became prohibited under Act 27. Section 5(a)(3) of the act (63 P. S. § 818.5(a)(3)) was amended to eliminate licensure for activities that had previously been lawful for persons holding a broker license.

Under the definition of "broker" in section 2 of the act (63 P. S. § 818.2), the activities which constituted brokering were very broad and included auctioning vehicles, selling vehicles on consignment (acting as a seller's agent) and acting as a buyer's agent. Prior to Act 27, the Board issued a broker license to a person engaged in these activities.

Under Act 27, the General Assembly substantially amended the act. Act 27 prohibited brokering (section 5(a)(3) of the act) but permitted some of what had previously been defined as brokering activity to be performed by other licensees. This change was accomplished

Regulation 16A-604**State Board of Vehicle Manufacturers, Dealers and Salespersons**

PROPOSAL: Regulation 16A-604 amends 49 PA Code, Chapter 19, regulations of the State Board of Vehicle Manufacturers, Dealers and Salespersons. The amendment would allow a special display area for up to five vehicles.

The proposed Rulemaking was published in the Pennsylvania Bulletin on December 14, 2002, and resubmitted to the Professional Licensure Committee on February 5, 2003. The Professional Licensure Committee has until February 25, 2003 to submit comments on the regulation.

ANALYSIS: In order to promote public safety, current Board regulations set forth specific grading and surfacing requirements for vehicle display areas to which customers are invited. Due to marketing concerns, dealer licensees have requested permission to display vehicles in certain non-conforming "showcase" areas to which public access would not be granted. The Board finds this request to be reasonable and proposes to amend its regulations to allow a non-conforming display area for up to five vehicles, so long as customers are not permitted in the area.

RECOMMENDATIONS: It is recommended that the Professional Licensure Committee take no formal action until final form regulations are promulgated, however, the Committee submits the following comment:

1. How is the public to be kept out of non-conforming display areas, especially during non-business hours when no dealership personnel are present? Is the lowering of public safety measures for economic reasons justified, especially when the Board indicates that no neighboring states have lowered safety standards?

House of Representatives
Professional Licensure Committee
February 14, 2003

Comments of the Independent Regulatory Review Commission

on

**State Board of Vehicle Manufacturers, Dealers and Salespersons
Regulation No. 16A-604**

Established Place of Business for Dealers

March 6, 2003

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered within two years of the close of the public comment period, the regulation will be deemed withdrawn.

Section 19.18. Established place of business for dealers. – Protection of public safety; Clarity.

Paragraph (3)(ii) states that a dealership may display up to five vehicles without regard for grading or surfacing requirements, “so long as customers are not permitted to be present in the nonconforming area.” The House Professional Licensure Committee questioned how the public will be kept out of the nonconforming display area when dealership personnel are not present or during non-business hours. We agree and question how public safety will be protected. In addition, will dealerships be held responsible for keeping the public out of “nonconforming areas”? The Board should add requirements to make areas inaccessible to the public or provide additional justification for this amendment when it submits the final-form regulation.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

2311

2007-1 11:33

RECEIVED

DO NOT WRITE IN THIS SPACE

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.

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

Tanya Columbus
BY: _____

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-604

8.18.04

DATE OF APPROVAL

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: *Edwin K. Galbreath, Jr.*
Edwin K. Galbreath, Jr.

Asst.
(Deputy General Counsel
(Chief Counsel,
~~Independent Agency~~
(strike inapplicable title)

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

BY: _____

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

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

FINAL RULEMAKING

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

49 Pa. Code § 19.18
Established Place of Business for Dealers

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) amends § 19.18 (relating to established place of business for dealers) to read as set forth in Annex A.

Description and Need for Rulemaking

The rulemaking amends § 19.18(a)(3)(ii) to permit a licensed vehicle dealer to display up to five vehicles in a non-conforming area that is not open to the public.

Under the current regulation, a dealer may display vehicles only in areas that are properly graded and surfaced. The purpose of this restriction is to protect potential customers who might slip or otherwise be injured while looking at a vehicle in an area that is not properly graded or surfaced. A consequence of this restriction is that a dealer may not showcase a vehicle, such as on grass, boulders or a raised display, to advertise it to the public. The amendment permits a dealer that has an adequate conforming display area at its facility to display up to five vehicles in a non-conforming area, “so long as customers are not permitted to be present in the nonconforming area.”

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 32 Pa.B. 5417 (November 2, 2002) with a 30-day public comment period. The Board did not receive comments from any members of the public. The Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) as part of their review of proposed rulemaking under the Regulatory Review Act (71 P.S. §§ 745.1-745.12). The Board did not receive comments from the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) as part of its review of proposed rulemaking under the Regulatory Review Act.

Both IRRC and HPLC questioned how the public is to be kept out of nonconforming display areas, especially outside of business hours. IRRC also questioned whether a dealer would be held responsible for keeping the public out of nonconforming areas. HPLC also questioned whether the lowering of public safety measures is justified by economic reasons.

Restricting the display of vehicles for sale to a properly graded and surfaced area is a prophylactic measure. A customer, possibly distracted by the vehicle for sale from adequately observing footing, is more protected from slipping or otherwise being injured by the display area if that display area is properly graded and surfaced. When customers are kept out of a non-conforming area, there is no lowering of public safety measures.

In response to these comments from IRRC and HPLC, the Board revised its amendment to the regulation to suggest measures that a dealer might take to make clear that customers are not permitted to be present in the nonconforming area, such as by posted non-trespassing sign, barrier or other reasonable precaution. The Board does not intend, by this rulemaking, to alter in any way the obligation that a dealer, as the possessor of real estate, owes to those who enter upon the land.

Additionally, in § 19.18(8) the Board referenced the Fire and Panic Act (35 P.S. §§1221 - 1235). Because the pertinent sections of this law were repealed by enactment of the Pennsylvania

Construction Code Act (35 P.S. § 7210.101-7210.1103), the Board has revised this paragraph to refer only to the Pennsylvania Construction Code Act.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Effective Date

The final-form rulemaking will become effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The rulemaking is promulgated under Sections 2 and 4(9) of the Board of Vehicles Act (63 P.S. §§ 818.2, 818.4(9)).

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on November 2, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 5417, to IRRC and the Chairpersons of the House Professional Licensure Committee (HPLC) and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing this final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on _____, 2004, the final-form rulemaking was approved by the HPLC. On _____, 2004, the final-form rulemaking was deemed approved by the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 2004, and approved the final-form rulemaking.

Additional Information

Persons who require additional information about the final-form rulemaking should submit inquiries to Teresa Woodall, Board Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, by mail to P.O. Box 2649, Harrisburg, PA 17105-2649, by telephone at (717) 783-1697, or by e-mail at st-vehicle@state.pa.us.

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) and regulations thereunder, 1 Pa. Code §§ 7.1 and 7.2.
- (2) A public comment period was provided as required by law, and all comments were considered.
- (3) The amendments to this final-form rulemaking do not enlarge the scope of proposed rulemaking published at 32 Pa.B. 5417.
- (4) The final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Board of Vehicles Act.

Order

The Board, acting under its authorizing statute, orders that:

- (a) The regulations of the Board at 49 Pa. Code Chapter 19 are amended, by amending § 19.18, to read as set forth in Annex A.
- (b) The Board shall submit this order and Annex A to the Office of Attorney General and the Office of General Counsel for approval as required by law.
- (c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.
- (d) The final-form rulemaking shall take effect upon publication in the *Pennsylvania Bulletin*.

Edwin K. Galbreath, Jr., Chairman
State Board of Vehicle Manufacturers,
Dealers and Salespersons

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

* * *

DEALERSHIP LICENSE

* * *

§ 19.18. Established place of business for dealers.

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 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 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:

* * *

(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 shall be surfaced with concrete, asphalt, slag, brick, stone, aggregate, gravel, cinder or similar material. A dealership that otherwise complies with this paragraph may display up to five vehicles without regard for the grading or surfacing where those vehicles are displayed, so long as customers are not permitted to be present in the nonconforming area. A DEALER MAY DEMONSTRATE THAT CUSTOMERS ARE NOT PERMITTED TO BE PRESENT IN THE NONCONFORMING AREA BY POSTING A NO-TRESPASSING OR SIMILAR SIGN, ERECTING A BARRIER OR TAKING ANOTHER REASONABLE PRECAUTION.

* * *

~~(8) Fire-safety requirements. A dealership that is located in Pittsburgh, Philadelphia or Scranton shall possess a certificate of compliance with fire safety requirements issued by the appropriate fire safety authority of that city. A dealership that is located somewhere other than in Pittsburgh, Philadelphia or Scranton shall possess a Certificate of Occupancy issued by the Department of Labor and Industry under the Act of April 27, 1927 (P.L. 465, No. 299) (35 P.S. §§ 1221—1235), known as the Fire and Panic Act.~~ A DEALERSHIP SHALL POSSESS A CERTIFICATE OF OCCUPANCY ISSUED BY A BUILDING CODE OFFICIAL IN ACCORDANCE WITH THE PENNSYLVANIA CONSTRUCTION CODE ACT (35 P.S. §§ 7210.101-7210.1103).

* * *



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

October 1, 2004

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


Re: Final Regulation
State Board of Vehicle Manufacturers, Dealers and Salespersons
16A-604: Display

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to display of vehicles (16A-604).

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

Sincerely,


Edwin K. Galbreath Jr., Chairperson
State Board of Vehicle Manufacturers,
Dealers and Salespersons

EKG/TAB:law

Enclosure

cc: Linda C. Barrett, Chief Counsel
Department of State
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Thomas A. Blackburn, 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-604

SUBJECT: State Board of Vehicle Manufacturers, Dealers and Salespersons -
Established Place of Business for Dealers

AGENCY: DEPARTMENT OF STATE

TYPE OF REGULATION

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

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/1/04	<i>Sandra J. Hays</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
10/1/04	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
10/1/04	<i>Ray F. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

August 18, 2004