

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		2007 11 11 11:11 IRRC Number: 2311
(2) I.D. Number (Governor's Office Use) 16A-604		
(3) Short Title Display Regulations		
(4) PA Code Cite 49 Pa. Code § 19.18	(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) <input checked="" type="checkbox"/> Proposed Rulemaking <input type="checkbox"/> Final Order Adopting Regulation <input type="checkbox"/> Final, Proposed Omitted	(7) Is a 120-Day Emergency Certification Attached? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes: By the Attorney General <input type="checkbox"/> Yes: By the Governor	
(8) Briefly explain the regulation in clear and nontechnical language. The regulation 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.		
(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) <u>as amended</u>, 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 amendments are not mandated by federal or state law, regulation, or court order.

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

The current regulation regarding dealer displays unnecessarily restricts the ability of dealers to market vehicles. The proposed amendment would 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 nonregulation.

The grading and surfacing requirements for display lots protect the public by assuring adequately safe footing where vehicles for sale are open to public inspection. 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 of their vehicles. There are 8700 licensed vehicle dealers in the Commonwealth who will be affected by the proposed regulation.

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 groups who will be adversely affected by the regulation.

(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 a draft of the proposed amendment to the following dealer and industry groups for comment: Pennsylvania Automotive Association, Pennsylvania Motorcycle Dealers Association, Pennsylvania Manufactured Housing Association, Adesa Pittsburgh, Butler Auto Auction, Central Penn Sales, Central Pennsylvania Auto Auction, D-A Auto Auction, Corry Auto Dealers Exchange, Danville Auto Dealers Exchange, Ebensburg Auto Auction, Garden Spot Auto Auction, Harrisburg Auto Auction, Hatfield Auto Auction, Manheim Auto Auction, Motorworld Auto Auction, North East Auto Pennsylvania Auction, Pennsylvania Auto Dealers' Exchange, Perryopolis Auto Auction, Swade Auto Auction, Tri State Auto Auction, Tri State Auto Auction and Pennsylvania Independent Automobile Dealers Association (PIADA). 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.

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.

There are no specific costs or savings to state government associated with 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
SAVINGS:	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A	\$ N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A					
Regulated Community		minimal	minimal	minimal	minimal	minimal
Local Government		N/A	N/A	N/A	N/A	N/A
State Government		N/A	N/A	N/A	N/A	N/A
Total Costs						
REVENUE LOSSES:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Minimal costs to the regulated community may occur in complying with the proposed regulation. Such expenses might include roping off a non-conforming area.

Regulatory Analysis Form

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

Program	FY -98-99	FY -99-00	FY -00-01	FY 01-02
Board expenditures	\$1,295,447.34	\$1,303,099.05	\$1,323,801.08 Projected	\$1,364,000.00 Budgeted
Board revenues	\$1,978,228.43	\$621,293.28	\$2,144,964.70	\$888,000.00 Projected

(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 the potential, minimal expenditures by dealers in complying with the proposed amendment.

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

No nonregulatory approaches were considered because the display requirements are already contained in the Board's regulations.

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

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

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 proposed regulation will not put Pennsylvania at a competitive disadvantage with other states. 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) or 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 regulatory proposals at regularly scheduled public meetings each month. The Board will meet December 13-14, 2001. Meeting dates for 2002 include October 17, November 14 and December 12. However, interested parties may contact the Board Administrator for additional information.

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 is 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)

#2311

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.

Dwight J. York
BY: _____
(DEPUTY ATTORNEY GENERAL)

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

John V. Turner
BY: _____

JUL 16 2002

DOCUMENT/FISCAL NOTE NO. 16A-604

DATE OF ADOPTION: _____

DATE OF APPROVAL

BY: *Edward J. Cernic Jr.*
Edward J. Cernic Jr.

6/21/02

(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, Chapter 19
Established place of business for dealers

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend its regulations at 49 Pa. Code § 19.18, relating to facilities requirements for licensed dealerships, as set forth in Annex A.

The proposed amendment would amend section 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.

Effective Date

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

Statutory Authority

The amendments are authorized under Section 4(9) of the Board of Vehicles Act (Act), Act of December 22, 1983 (P.L. 306, No. 84), as amended, 63 P.S. § 818.4(a)(9).

Background and Need for the Amendment

Section 19.18(a)(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. 49 Pa. Code § 19.18(a)(3). Subparagraphs (ii) through (iv) set forth requirements for outdoor display areas.

As a result of the present outdoor display requirements of section 19.18(a)(3)(ii), vehicle dealers have been unable to lawfully display any vehicle in a "showcase" area, such as on the front lawn of the dealership or upon some structure. 49 Pa. Code § 19.18(a)(3)(ii). 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 section 19.18(a)(3)(ii) to permit a dealer to create such a "showcase" area for up to five vehicles. In order 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 non-conforming display area.

Description of Proposed Amendments

The Board proposes to add a new sentence to section 19.18(a)(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 statute and in regulation at section 19.18(a)(3)(ii) are satisfied because the regulation requires that the public may not have access to the non-conforming showcase area.

Compliance with Executive Order 1996-1

The Board sent this proposed amendment to major dealer organizations as required under the directives of Executive Order 1996-1, including the Pennsylvania Automotive Association (PAA), the Pennsylvania Independent Automobile Dealers Association (PIADA), the Pennsylvania Manufactured Housing Association (PMHA) and the Pennsylvania Motorcycle Dealers Association (PMDA). Comments were received which agreed that the Board should authorize the display of vehicles on lawn fronts at dealerships. PIADA, through its executive director, suggested a licensed dealer be permitted to display up to ten vehicles in non-conforming 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 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 amendment will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendment 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

Pursuant to section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), the Board submitted a copy of this proposed regulation on October 17, 2002, to the Independent Regulatory Review Commission (IRRC), the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC), and the House Professional Licensure Committee (HPLC). In addition to submitting the proposed rulemaking, the Board has provided IRRC, SCP/PLC, and HPLC 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.

Under section 5(g) of the Regulatory Review Act (71 P.S. § 745.5(g)), if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the SCP/PLC and HPLC review period. The notification shall specify the regulatory review criteria that have not been met. The Regulatory Review Act specifies detailed procedures for review of objections by the Board, the General Assembly, and the Governor prior to publication of the regulations.

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., 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) *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 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 sub-section 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.

* * *



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 17, 2002

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

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

Dear Chairman McGinley:

Enclosed is a copy of a proposed rulemaking package of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to display of vehicles by licensed dealers.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Edward J. Cornic, Jr.", written in a cursive style.

Edward J. Cornic, Jr., Chairperson
State Board of Vehicle Manufacturers, Dealers
and Salespersons

EJC/TLM:kmh

Enclosure

cc: David M. Williams, Acting Commissioner
Bureau of Professional and Occupational Affairs
John T. Henderson, Jr., Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Philip Zarone, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
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-604
SUBJECT: State Board of Vehicle Manufacturers, Dealers & Salespersons
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
OCT 17 2002

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
10/17/02	<i>Lori A. Clark</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
OCT 17 2002	<i>Amie E. Zuber</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
10/17/02	<i>Diana Pagan</i>	INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL
10/17/02	<i>C. Lee Brown</i>	LEGISLATIVE REFERENCE BUREAU

July 19, 2002