

# Regulatory Analysis Form

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2004 JUN -9 11:11 AM

REVIEW COMPLETED

(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-607

IRRC Number: 2317

(3) Short Title

**Consignment**

(4) PA Code Cite

49 Pa. Code § 19.18a

(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 nontechnical language.

**The final rule-making sets forth consumer-protection oriented requirements for licensed dealers to engage in consignment sales without holding a vehicle auction license.**

## 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 4(9) and 5(f)(3) of the Board of Vehicles Act (63 P.S. §§ 818.4(9) and 818.5(f)(3)).**

(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. However, the rulemaking implements the provision of Section 5(f)(3) of the Board of Vehicles Act (63 P.S. § 818.5(f)(3)), which authorizes a licensed dealer to engage in consignment sales without being licensed as a wholesale vehicle auction or public or retail vehicle auction.**

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

**In a consignment sale, the buyer relies upon the dealer to provide information sufficient for the buyer to decide whether and at what price to purchase the vehicle, and to deliver good title to the vehicle. Because it does not own the vehicle, the dealer would not have any reason to know of potential flaws.**

**The rulemaking requires the dealer to obtain in writing from the seller material facts relative to the vehicle, including known accident history, vehicle condition and odometer disclosure. Without this information, or an implied-in-law obligation or warranty, the buyer is at a severe disadvantage in negotiating the sale. The rulemaking requires the seller to set forth any warranties and to identify any lien holders. The rulemaking also requires the dealer to obtain a copy of the current registration card and a copy of the title or a printout of an electronic lien verification. This allows the dealer, on behalf of the buyer, to assure that the seller is the owner and that all persons with claims against the vehicle are identified in advance of the sale. The rulemaking also requires the dealer to have title to the vehicle assigned to the dealer prior to applying for title in the name of the buyer, in order to avoid title jumping. Further, the rulemaking requires the dealer to disclose that the sale is on consignment and prohibits the dealer from delivering the vehicle until all paperwork is completed. In this manner, the buyer (and the dealer) can be assured that title is good and is delivered to the buyer, before the buyer pays the money.**

**In a consignment sale, the seller relies upon the dealer to sell the vehicle and obtain payment. There is no current requirement that the seller and the dealer enter into a written agreement to sell a vehicle on consignment. The rulemaking requires the dealer and the seller to set forth how the dealer will be paid and identify insurance coverage. The rulemaking also prohibits the dealer from delivering the vehicle until all paperwork is completed, assuring that the seller can be paid before relinquishing the vehicle.**

## Regulatory Analysis Form

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

**In the absence of regulation, buyers would be at risk for not being able to discern the quality of the vehicle and the ability of the seller to deliver good title. Sellers would be at risk of the dealer not maintaining insurance or not truly agreeing on the commission to be paid to the dealer, as well as delivering the vehicle to a buyer without assuring payment. Dealers would be at risk of buyer claims for undisclosed defects and warranty and failure to deliver title, as well as seller claims of commission overcharge and failure to provide payment.**

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

**Consignment buyers and sellers and dealers will benefit from the regulation. By assuring that licensed vehicle dealers selling vehicles on consignment enter into written consignment agreements with sellers, sellers are protected. By requiring sellers to disclose material information regarding the vehicle's condition to the dealer, buyers are protected because the dealer is under an obligation to disclose such information to the buyer. Additionally, by requiring that the vehicle not be delivered until all title and registration paperwork is completed, the buyer and the dealer are protected from the seller's failure to produce the title.**

(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.)

**Dealers and those persons selling a vehicle on consignment through dealers will be required to comply with the agreement and disclosure provisions of the rulemaking. The Board has identified no other individuals 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 engage in consignment sales will be required to conform to the regulation. There are approximately 8700 licensed vehicle dealers in the Commonwealth who will be affected by the rulemaking.**

(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. The Pennsylvania Automotive Association commented, expressing that the proposed regulation was consistent with discussions PAA had with various state agencies and the Board in 1994.**

## Regulatory Analysis Form

(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.

**Dealers engaging in consignment sales will be required to prepare a written consignment agreement between the dealer and the seller. The Board anticipates no other costs to the regulated community in complying with the guidelines related to consignment sales.**

(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.**

(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	FY+1	FY+2	FY+3	FY+4	FY+5
<b>SAVINGS:</b>	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
<b>COSTS:</b>						
Regulated Community						
Local Government						
State Government						
Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
<b>REVENUE LOSSES:</b>						
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.

The Board anticipates that there will be some minimal cost incurred by dealers who engage in consignment sales associated with the requirement for a written agreement. Because the regulated community is not required to take any specific actions to comply with the rulemaking (unless engaging in consignment sales), the Board anticipates that there will be no other 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

## Regulatory Analysis Form

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

**The consumer protection benefits of the rulemaking, while not quantifiable, outweigh any potential minimal cost to dealers who engage in consignment sales in complying with the rulemaking.**

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

**The Board considered no nonregulatory alternatives.**

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

**The Board considered no alternative regulatory schemes.**

(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.**

## Regulatory Analysis Form

(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. The rulemaking is similar to the regulation in other states regarding consignment sales. For example:**

**A licensed vehicle dealer in Delaware engaging in a consignment sale must have a contract that specifies the name and address of the owner of the vehicle; name and address and dealer identification number of the dealer; description of the vehicle on consignment; beginning and termination dates of the contract; net amount the owner is to receive if the vehicle is sold; and disclosure of unsatisfied liens on the vehicles. 21 Del. Code § 6306.**

**A licensed dealer in New York engaging in a consignment sale must have a letter of consignment and proof of ownership of the vehicle. N.Y. Comp. Codes R. & Regs. Tit. 78, § 78.40(a). The letter of consignment must identify the vehicle by make, model and VIN, indicate the terms of the sale, and authorize the dealer to sell the vehicle. N.Y. Comp. Codes R. & Regs. Tit. 78, § 78.40(b). In addition, under New York rules, the consignor must sign the title to the dealer when the dealer tenders the contract price to the owner. N.Y. Comp. Codes R. & Regs. Tit. 78, § 78.40(e).**

**A licensed dealer in Ohio engaging in a consignment sale must post a bond and provide a written contract to the buyer prior to sale. Ohio Rev. Code Ann. §§ 4517.20, 4517.26; Ohio Admin. Code Ann. § 4501:1-3-10.**

**A licensed dealer in West Virginia may not display or offer for sale any vehicle not owned by the dealer. W.Va. Code § 91-6-2(2.2.4(a)). A licensed auction may sell on consignment subject to rules similar to those set forth in this rulemaking, including posting a bond, providing for insurance coverage, and disclosing the consignment to potential purchasers. W.Va. Code § 91-6-5.**

(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 (professional licensing link from the Department of State page, <http://www.dos.state.pa/bpoa>), 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 a dealer engaging in a consignment sale to have a written consignment agreement with the seller. This rulemaking requires no other change to reporting, recordkeeping 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 monitors its regulations.**





FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE BUREAU

2004 JUN -8 11:11:54

(Pursuant to Commonwealth Documents Law)

REVIEW CERTIFICATION

DO NOT WRITE IN THIS SPACE

#2317

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)

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

DOCUMENT/FISCAL NOTE NO. 16A-607

*[Handwritten signature]*  
BY: \_\_\_\_\_

\_\_\_\_\_  
DATE OF APPROVAL

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

6/24/04  
DATE OF APPROVAL

BY: *[Handwritten signature]*  
Edwin K. Galbreath, Jr.

(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 § 19.18a  
Consignment Sales

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) adds § 19.18a (relating to consignment sales) to read as set forth in Annex A.

### Description and Need for Rulemaking

The rulemaking adds § 19.18a to establish requirements for licensed vehicle dealers who wish to sell vehicles on a consignment basis without holding a vehicle auction license, as authorized by section 5(f)(3) of the Board of Vehicles Act (act) (63 P.S. § 818.5(f)(3)). Previously, the Board had not adopted any regulations in this area. By the act of April 19, 1996 (P.L. 104, No. 27), the General Assembly made substantial amendments to the act. Among the changes, the General Assembly eliminated licensure for brokers and created a new class of licensure for public or retail auctions and wholesale auctions. In addition, the activities of brokering – selling at auction and selling on consignment – were divided between dealers and the new auction licensees. Specifically, section 5(f)(3) of the act now provides that a “dealer licensed under this act without possessing a wholesale auction or public or retail auction license shall be permitted to sell vehicles on consignment.” The General Assembly did not specify consumer protection provisions that would apply to the new class of licensure.

Dealers did not previously sell vehicles on consignment. Thus, consumers may be unaware that a dealer does not own the consigned vehicles on display at the dealer’s lot and that these vehicles do not have the same protections in title and warranty as vehicles owned by the dealer. The rulemaking is necessary to address important consumer protection issues. The rulemaking will require an exchange of information between a dealer and a consignor, which in turn will require an exchange of information between the dealer and a potential buyer, obviating title and warranty problems after purchase. Additionally, the rulemaking will require that delivery of the vehicle will not occur until after execution of the title and other paperwork.

### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 32 Pa.B. 6134 (December 14, 2002) with a 30-day public comment period. The Board received comments from Pennsylvania Automotive Association (PAA) and Pennsylvania Independent Automobile Dealers Association (PIADA), but not from any other 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.

HPLC commented that the proposed version of the regulation was not underlined to indicate that it is an amendment to the Board’s regulations. The Board has corrected this in the final-form regulation.

HPLC and IRRC both recommended that the Board adopt minimum size and clarity specifications for the written disclosure required by § 19.18a(d) that the vehicle is held on consignment and is not owned by the dealer to ensure proper notice to potential buyers. Because the Board finds this to be a reasonable requirement, the Board has revised the final-form regulation to require that the notice be in at least 20-point bold type.

PIADA objected to the requirement of § 19.18a(b)(1), which requires a separate written consignment agreement to be maintained for each vehicle that is consigned, rather than permitting a dealer to include multiple vehicles on a single consignment agreement with a given consignor. The Board has not revised its regulation in response to this comment. A separate consignment agreement permits simplified handling of the paperwork for each vehicle, as well as dealing with potential buyers, without any effect from the sale of, or failure to sell, any other vehicle from the same consignor. The Board believes that this benefit outweighs any benefit of the reduced number of consignment agreements that may result from including additional vehicles from the same consignor on a single consignment agreement.

PIADA also commented on the requirement of § 19.18a(b)(1)(vii), which requires the consignment agreement to include an account number for each lien holder, objecting that this may violate the privacy of the consignor. The Board has not revised its regulation in response to this comment. This information is required to protect the dealer (and by extension, the buyer) by providing a readily verifiable means to confirm the existence and extent of any lien. The dealer is not obligated to provide this information to every potential buyer.

PIADA commented on § 19.18a(b)(1)(viii), which requires the consignment agreement to include any material facts relative to the vehicle, including accident history, vehicle condition and odometer disclosure, objecting that this would impose upon the dealer strict liability to know the entire accident history of the vehicle. PIADA suggested that the Board revise its final-form regulation to require disclosure of accident history and vehicle condition only if the dealer offers a warranty. By promulgating this regulation, the Board does not intend to prohibit any “as-is” sale by consignment or to make the dealer strictly liable for the condition of any vehicle sold on consignment. The Board included this requirement to provide a source of information to a potential buyer where the consigning seller is not involved in showing the vehicle or directly available to answer questions. The Board included this requirement also to provide additional information to the dealer because § 19.18a(c) requires that the dealer must, at least temporarily, become the owner of the vehicle prior to making the final sale. Accordingly, the Board has not revised its final-form regulation in response to this comment, other than to specify that the accident history to be disclosed is that history known to the consignment seller.

PAA commented that federal law does not permit the dealer to sign on behalf of the consigning seller on the back of the title, such as by the power of attorney required by § 19.18a(b)(3), as well as buyer, which results from the compliance with § 19.18a(c), which requires the dealer to have title assigned to the dealer prior to applying for title in the buyer’s name. Accordingly, the Board has revised its final-form regulation to delete § 19.18a(b)(3) as previously proposed.

PAA and PIADA both suggested that the Board remove from § 19.18a(b)(4) any requirement for a dealer to hold the title to a vehicle held on consignment. In proposing this rulemaking, the Board sought to protect a buyer from a consignor (or dealer) failing to provide the title by the time of sale. As PAA has indicated, the requirement that the dealer notify potential buyers that the vehicle is being sold on consignment, rather than out of the dealer's inventory, puts the buyer on notice that the sales process is different and may be slowed by involving a seller other than the dealer and the resultant need to delay the sales transaction until the seller has produced the title (or appropriate substitute) to the dealer. Accordingly, the Board has revised the final-form regulation to omit any requirement that the dealer must hold the unexecuted title. As part of making this revision, the Board has removed from § 19.18a(b)(2) the alternative of holding a copy of the title and instead, placed into § 19.18(b)(3) the requirement that the dealer hold a copy of the title or a printout of the electronic lien verification. Compliance with this requirement will establish the owner's identity and alert the dealer to any title brands or lien-holders. Additionally, the Board has revised its final-form regulation to remove all requirements for lien satisfaction documentation, because compliance with § 19.18a(c) will result in satisfaction of all liens by the consignor.

Finally, the Board has added to the final-form regulation a prohibition that a dealer may not deliver a vehicle sold on consignment until the paperwork associated with that transaction has been completed. Delaying the sale until title and other documents are provided will also serve the purpose of protecting the buyer from a consignor (or dealer) who is unable to provide the title. Because the vehicle cannot be delivered prior to providing the title, there is no need to require a dealer who fails to provide a title to the purchaser to accept return of the vehicle and refund the entire purchase price, less actual depreciation, as suggested by PIADA. Moreover, the Board does not have the authority, under the act, to order a licensee to make restitution or otherwise provide such a remedy.

#### 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 4(9) and 5(f)(3) of the Board of Vehicles Act (63 P.S. §§ 818.4(9) and 818.5(f)(3)).

### Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on December 14, 2002, the Board submitted a copy of the notice of proposed rulemaking, published at 32 Pa.B. 6134, 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 the 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 \_\_\_\_\_, the final-form rulemaking was approved by the HPLC. On \_\_\_\_\_, the final-form rulemaking was deemed approved by SCP/PLC. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on \_\_\_\_\_, 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 vehicle@pados.dos.state.pa.us.

### Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the Commonwealth Documents Law 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 final-form rulemaking adopted by this order is necessary and appropriate for the administration of the Board of Vehicles Act.
- (4) The final form regulation does not enlarge the scope of proposed rulemaking published at 32 Pa.B. 6134.

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 adding § 19.18a, 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

\* \* \*

**§ 19.18a. Consignment Sales.**

(a) A licensed dealer is permitted to engage in consignment sales without being licensed as a wholesale vehicle auction or public or retail vehicle auction, as defined in section 2 of the act (63 P.S. § 818.2), if the dealer meets the requirements of this section.

(b) The dealer shall maintain the following documents at the lot where the vehicle is displayed:

(1) A copy of a separate written consignment agreement with the consignor for each vehicle.

The written consignment agreement shall contain the following information:

(i) The name and signature of the consignor.

(ii) The make, model, year, vehicle identification number, and license plate number of the vehicle.

(iii) The length of the consignment period.

(iv) The terms of sale, including the minimum selling price, if any, and the amount of or formula for determining the dealer's commission.

(v) The terms of insurance coverage during the period of consignment, including the

name, address and telephone number of the consignor's insurance agent, if any.

(vi) The express identification of any warranties extended by the consignor.

(vii) The name and address or telephone number of all current lien holders, together with the account number for each lien.

(viii) Any material facts relative to the vehicle, including accident history KNOWN TO THE SELLER, vehicle condition and odometer disclosure.

(2) A copy of the current registration card or title.

(3) An executed power of attorney from the consignor to the dealer that authorizes the dealer to assign title of the vehicle A COPY OF THE TITLE OR A PRINT-OUT OF AN ELECTRONIC LIEN VERIFICATION.

(4) Either an unexecuted title, if the title is unencumbered, or a title release from each lien holder to pay off all liens, if the title is encumbered.

(c) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.

(d) Whenever a vehicle is displayed for sale on consignment, the dealer shall disclose in writing IN AT LEAST 20-POINT BOLD TYPE on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.

(E) A DEALER MAY NOT DELIVER A VEHICLE ON CONSIGNMENT SALE WITHOUT HAVING ALL TITLE, LIEN AND REGISTRATION DOCUMENTS SIGNED BY THE BUYER OR CONSIGNOR, OR BOTH, AS APPROPRIATE.



[ (2) No more than two waterskiers may be towed behind a boat. ]

\* \* \* \* \*

§ 111.65. Westmoreland County.

\* \* \* \* \*

(c) Conemaugh River Lake.

(1) Persons shall wear a Coast Guard approved personal flotation device at all times when on board boats less than 16 feet in length or any canoe or kayak.

(2) The operation of boats powered by internal combustion motors is prohibited.

\* \* \* \* \*

[Pa.B. Doc. No. 02-2227. Filed for public inspection December 13, 2002, 9:00 a.m.]

GAME COMMISSION

[58 PA. CODE CH. 137]

Feeding of Certain Wildlife Prohibited

To effectively manage the wildlife resources of this Commonwealth, the Game Commission (Commission), at its October 8, 2002, meeting, proposed the following change:

Add § 137.33 (relating to feeding of certain wildlife prohibited) to prohibit the feeding of bears.

The proposed rulemaking will have no adverse impact on the wildlife resources of this Commonwealth.

The authority for the proposed regulation is 34 Pa.C.S. (relating to Game and Wildlife Code) (code).

The proposed rulemaking was made public at the October 8, 2002, meeting of the Commission. Comments can be sent to the Director, Information and Education, Game Commission, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, until December 27, 2002.

1. Introduction

The Commission is proposing to add § 137.33.

2. Purpose and Authority

With increasing bear populations in parts of this Commonwealth, more and more conflicts are taking place between humans and bears. The feeding of bears helps to aggravate the situation by attracting bears to developed areas. The proposed rulemaking will eliminate this factor by making it unlawful to feed bears.

Section 103(a) of the code (relating to ownership, jurisdiction and control of game and wildlife) vests ownership, jurisdiction and control of game or wildlife in the Commission. Section 2102(a) of the code (relating to regulations) directs the Commission to promulgate "... such regulations as it deems necessary and appropriate concerning game or wildlife ... including regulations relating to the protection, preservation and management of game or wildlife ...". The proposed rulemaking would fulfill these mandates.

3. Regulatory Requirements

The proposed rulemaking would not impose additional requirements, but would prohibit an activity.

4. Persons Affected

Persons living within areas where black bears are located would not be able to intentionally feed bears or cause bears to congregate or habituate in an area.

5. Cost and Paperwork Requirements

The proposed rulemaking should not result in any additional cost or paperwork.

6. Effective Date

The proposed rulemaking will be effective on final-form publication in the Pennsylvania Bulletin and will remain in effect until October 31, 2004, unless a regulation is promulgated reauthorizing it.

7. Contact Person

For further information regarding the proposed rulemaking, contact David E. Overcash, Director, Bureau of Law Enforcement, 2001 Elmerton Avenue, Harrisburg, PA 17110-9797, (717) 783-6526.

VERNON R. ROSS, Executive Director

Fiscal Note: 48-152. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.33. Feeding of certain wildlife prohibited.

It is unlawful to, except for normal or accepted farming, habitat management practices, oil and gas drilling, mining, forest management activities or other legitimate commercial or industrial practices, intentionally lay or place food, fruit, hay, grain, chemical, salt or other minerals anywhere in this Commonwealth for the purpose of feeding bear, or to intentionally lay or place food, fruit, hay, grain, chemical, salt or other minerals that may cause bear to congregate or habituate an area. If songbird feeders are being used by bears, the Commission may issue a written notice prohibiting the songbird feeding. This section shall expire October 31, 2004, unless a regulation is promulgated reauthorizing it.

[Pa.B. Doc. No. 02-2228. Filed for public inspection December 13, 2002, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Consignment Sales

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to add § 19.18a (relating to consignment sales) to read as set forth in Annex A. The Board published a proposed rulemaking at 31 Pa.B. 822 (February 10, 2001) amending § 19.19 (relating to consignment sales). After further consideration, the Board determined that its prior proposed rulemaking did not

adequately address consumer concerns with consignment sales. Therefore, the Board determined that it should republish its proposed rulemaking to read as set forth in Annex A.

The proposed rulemaking establishes requirements for licensed vehicle dealers who wish to sell vehicles on a consignment basis without holding a vehicle auction license, as authorized by section 5(f)(3) of the Board of Vehicles Act (act) (63 P. S. § 818.5(f)(3)).

#### *Effective Date*

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

#### *Statutory Authority*

The proposed rulemaking is authorized under section 4(a)(9) of the act (63 P. S. § 818.4(a)(9)), which authorizes the Board to promulgate regulations necessary to the effective administration of the act.

#### *Background and Need for the Proposed Rulemaking*

By the act of April 19, 1996 (P. L. 104, No. 27) (Act 27), the General Assembly made substantial amendments to the act. Among the changes, the General Assembly eliminated licensure for brokers and created a new class of licensure for public or retail auctions and wholesale auctions. In addition, the activities of brokering—selling at auction and selling on consignment—were divided between dealers and the new auction licensees. Specifically, section 5(f)(3) of the act now provides that “[a] dealer licensed under this act without possessing a wholesale vehicle auction or public or retail vehicle auction license shall be permitted to sell vehicles on consignment.” The General Assembly did not specify consumer protection provisions that would apply to the new classes of licensure.

Dealers did not previously sell vehicles on consignment. Thus, consumers may be unaware that vehicles on display at a dealer’s lot are not owned by the dealer and do not have the same protections in title and warranty as vehicles owned by the dealer. The proposed rulemaking is necessary to address important consumer protection issues. The proposed rulemaking will require an exchange of information between dealers and consignors, which in turn will require an exchange of information between dealers and potential buyers, obviating title and warranty problems post purchase.

Section 19.19(a)(2) of the proposed rulemaking published at 31 Pa.B. 822 provided that “[t]he dealer need not possess the title while displaying the vehicle, but shall provide the executed title by the time of delivery of the vehicle to the buyer.” The Board determined that this provision would not adequately protect the public because it did not ensure that the dealer could obtain clear title to the consigned vehicle. Therefore, the Board decided to amend this subsection in a new proposed rulemaking to provide that the dealer must have either an unexecuted title if the title to the consigned vehicle is unencumbered or a title release from each lien holder if the title to the consigned vehicle is encumbered. In addition, the Board made several other changes to the prior proposed rulemaking. The Board followed the suggestions of the Independent Regulatory Review Commission (IRRC) relating to the wording “vehicle auction.” The Board added the provision that the dealer has a separate consignment agreement for each vehicle on consignment. The Board added the requirement that the consignment agreement specify the length of the consignment period. The Board added the provision that the dealer maintain an executed

power of attorney authorizing the dealer to sell the vehicle on behalf of the consignor. Finally, at IRRC’s suggestion, the Board deleted the provision requiring dealers to comply with applicable Federal and State laws regarding consignment sales, as dealers are already required to abide by these laws.

#### *Description of Proposed Rulemaking*

The proposed rulemaking requires a dealer who engages in consignment sales to enter into and keep a copy of the written consignment agreement between the dealer and the consignor covering the consigned vehicles. The agreements must be kept at the location where the vehicle is displayed for sale. The consignment agreement must contain the name and signature of the consignor to be legally binding. The consignment agreement must contain information that identifies the vehicle, to avoid fraud. The consignment agreement must set forth the length of the consignment period, so it is clear at any time whether the dealer has the right to negotiate the sale of the vehicle. The consignment agreement must include the terms of sale to protect the consignor from unauthorized actions by the dealer. The consignment agreement must contain the terms of insurance coverage to forestall arguments between the dealer and consignor if the vehicle is damaged or destroyed while on the dealer’s lot. The consignment agreement must contain information regarding any lien holders, which the dealer is, in turn, already required to disclose to potential buyers. This will protect the lien holders and potential buyers by assuring payment of the lien and assisting buyers in obtaining clear title. The consignment agreement must include a copy of the current registration card or title to alleviate concerns about the ability to later obtain clear title. Finally, the consignment agreement must include any warranties extended by the consignor and any material facts relative to the vehicle. This last provision helps protect the potential buyer by ensuring that the dealer will have the information necessary to properly represent the vehicle.

The proposed rulemaking also requires a dealer who engages in consignment sales to keep an executed power of attorney from the consignor to the dealer and either an unexecuted title, if the title is not encumbered, or a title release from each lien holder to pay off all liens, if the title is encumbered. These provisions are designed to ensure that the buyer will be able to obtain title to the vehicle. Subsection (c), requiring that the dealer take title from the consignor prior to applying for title in the name of the buyer, also helps ensure that the buyer can obtain title to the vehicle. Finally, the requirement in subsection (d), that the dealer display vehicles clearly marked as consignment, puts potential buyers on alert that the vehicle is not owned by the dealer and may have other than the usual warranties.

#### *Compliance with Executive Order 1996-1, “Regulatory Review and Promulgation”*

The Board sent this proposed rulemaking to dealer organizations as required under the directives of Executive Order 1996-1. 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 or political subdivisions. Dealers will be required to comply with additional paperwork requests of § 19.18a.

#### *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 November 14, 2002, the Board submitted a copy of this proposed rulemaking to 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, State Board of Vehicle Dealers, Manufacturers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105, [www.dos.state.pa.us](http://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-607. 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**

#### **§ 19.18a. Consignment sales.**

(a) A licensed dealer is permitted to engage in consignment sales without being licensed as a wholesale vehicle

auction or public or retail vehicle auction, as defined in section 2 of the act (63 P. S. § 818.2), if the dealer meets the requirements of this section.

(b) The dealer shall maintain the following documents at the lot where the vehicle is displayed:

(1) A copy of a separate written consignment agreement with the consignor for each vehicle. The written consignment agreement shall contain the following information:

- (i) The name and signature of the consignor.
- (ii) The make, model, year, vehicle identification number and license plate number of the vehicle.
- (iii) The length of the consignment period.
- (iv) The terms of sale, including the minimum selling price, if any, and the amount of or formula for determining the dealer's commission.
- (v) The terms of insurance coverage during the period of consignment, including the name, address and telephone number of the consignor's insurance agent, if any.
- (vi) The express identification of any warranties extended by the consignor.
- (vii) The name and address or telephone number of all current lien holders, together with the account number for each lien.
- (viii) Any material facts relative to the vehicle, including accident history, vehicle condition and odometer disclosure.

(2) A copy of the current registration card or title.

(3) An executed power of attorney from the consignor to the dealer which authorizes the dealer to assign title of the vehicle.

(4) Either an unexecuted title, if the title is unencumbered, or a title release from each lien holder to pay off all liens, if the title is encumbered.

(c) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.

(d) Whenever a vehicle is displayed for sale on consignment, the dealer shall disclose in writing on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.

[Pa.B. Doc. No. 02-2229. Filed for public inspection December 13, 2002, 9:00 a.m.]

**Regulation 16A-607****State Board of Vehicle Manufacturers, Dealers and Salespersons**

**PROPOSAL:** Regulation 16A-607 amends 49 PA Code, Chapter 19, regulations of the State Board of Vehicle Manufacturers, Dealers and Salespersons. The amendment implements 1996 amendments to the Board of Vehicles Act relating to consignment sales.

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:** The Board of Vehicles Act, (P.L. 306, No. 84), was amended by Act 27 of 1996 to allow licensed vehicle dealers to act as vehicle brokers, and provided that vehicle dealers do not need to hold a vehicle auction license in order to sell a vehicle on a consignment basis. Proposed Section 19.18a sets forth the conditions under which licensed dealers would be permitted to engage in consignment sales.

Vehicle dealers would be required to maintain and display a copy of a written consignment agreement with the consignor at the lot where the vehicle is displayed. The proposed regulation sets forth a list of information which must appear in the agreement, which includes the name and signature of the consignor; the make, model, year, vehicle identification number and license plate number; the length of the consignment period; the terms of sale and the amount of the dealer's commission; the terms of insurance coverage during the period of consignment; warranties extended by the consignor; a list of all current lien holders; and any material facts relative to the vehicle including an accident history.

Other documents that must be maintained at the vehicle's location would include a copy of the current registration card or title; an executed power of attorney from the consignor to the dealer authorizing the assignment of title; an unexecuted title if the title is unencumbered, or a title release from each lien holder if the title is encumbered. The dealer would be responsible for having the title assigned from the consignor to the dealer prior to applying for title in the name of the buyer. Dealers would be required to disclose in writing on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.

**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 comments:

1. As set forth in Annex A, the draft of the proposed regulation is not underlined to indicate that it is an amendment to the Board's regulations.
2. The Committee recommends that the Board adopt minimum size and clarity specifications for the written disclosure required by Sec. 19.18a(d) to ensure proper notice to potential buyers.

House of Representatives  
Professional Licensure Committee  
February 14, 2003



JOHN R. MCGINLEY, JR., ESQ., CHAIRMAN  
ALVIN C. BUSH, VICE CHAIRMAN  
ARTHUR C. COCCHIARELLI  
ROBERT J. HARRISON, III  
MURRAY L. BERG, ESQ.  
ROBERT E. NYCE, EXECUTIVE DIRECTOR  
MARY S. WYATT, CHIEF COUNSEL

INDEPENDENT REGULATORY REVIEW COMMISSION  
COMMONWEALTH OF PENNSYLVANIA  
333 MARKET STREET  
14TH FLOOR  
HARRISBURG, PA 17101

irrc@irrc.state.pa.us  
<http://www.irrc.state.pa.us>  
(717) 783-5417  
Fax (717) 783-2664

March 6, 2003

Edward J. Cernic, Jr., Chairperson  
State Board of Vehicle Manufacturers, Dealers and Salespersons  
116 Pine Street  
Harrisburg, PA 17105

Re: Regulation #16A-607 (IRRC #2317)  
State Board of Vehicle Manufacturers, Dealers and Salespersons  
Consignment Sales

Dear Chairperson Cernic:

Enclosed are the Commission's Comments that include objections and recommendations for consideration when you prepare the final version of this regulation. These Comments are not a formal approval or disapproval of the regulation. However, they specify the regulatory review criteria that have not been met.

The Comments will soon be available on our website at [www.irrc.state.pa.us](http://www.irrc.state.pa.us). If you would like to discuss them, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce  
Executive Director  
wbg

Enclosure

cc: Honorable Mario J. Civera, Jr., Majority Chairman, House Professional Licensure Committee  
Honorable William W. Rieger, Democratic Chairman, House Professional Licensure Committee  
Honorable Robert M. Tomlinson, Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Lisa M. Boscola, Minority Chairman, Senate Consumer Protection and Professional Licensure Committee  
Honorable Benjamin Ramos, Acting Secretary, Department of State

**Comments of the Independent Regulatory Review Commission**

**on**

**State Board of Vehicle Manufacturers, Dealers and Salespersons**

**Regulation No. 16A-607**

**Consignment Sales**

**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. § 745.5a(h) and (i)) 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 19.18a Consignment sales. - Clarity.**

The House Professional Licensure Committee recommends that the Board adopt minimum size and clarity specifications for the written disclosure required by Subsection (d) to ensure proper notice to potential buyers. We agree. The Board should consider requiring use of standard language and specifying a minimum font size for this notice.



MAILING ADDRESS: P.O. BOX 2955 • HARRISBURG, PA 17105-2955  
SHIPPING ADDRESS: 1925 N. FRONT ST. • HARRISBURG, PA 17102  
717-255-8311 • 800-242-3745

## PENNSYLVANIA AUTOMOTIVE ASSOCIATION

March 11, 2003

**RECEIVED**

MAR 13 2003

DOS LEGAL COUNSEL

Thomas A. Blackburn, Counsel  
State Board of Vehicle Manufacturers,  
Dealers and Salespersons  
Commonwealth of Pennsylvania  
116 Pine Street, 4<sup>th</sup> Floor  
Harrisburg, PA 17101

RE: Proposed Regulations on Consignment Sales

Dear Mr. Blackburn:

PAA has reviewed the proposed regulations of the Board regarding consignment sales and has several comments. Overall the Board has outlined the parameters to ensure that a seller providing a vehicle to a dealer on consignment and the buyer of the consigned vehicle are protected with the procedures put into place. PAA is, however, concerned with the one requirement that the dealer must hold title for the consigned vehicle as part of the paperwork evidencing the agreement to consign the vehicle. PAA believes the owner/seller should have the right to choose whether to leave the title with the dealer or keep it in the seller's possession as leverage to know when the sale is to occur and when to expect payment for the vehicle sold on consignment. Otherwise the few unscrupulous dealers could sell the vehicle and deliver title, while the seller may not know the vehicle was sold and end up not being paid for the consigned vehicle's sale.

As the owner/seller of the vehicle, the ability to hold the title until the vehicle is to be sold is the only check the seller has to let him know when the vehicle is to be sold. The seller holding the title requires the dealer to contact him and have the seller bring the title to the vehicle, so that the vehicle and the title may be delivered to the buyer. As the proposed regulations require the dealer to identify the vehicle as a consignment vehicle, the buyer would be put on notice that this is a different type of sale than buying direct from the dealership. The buyer may not be able to take delivery of the vehicle on the spot, because there is an owner/seller that has interest in knowing that the vehicle is to be sold and entitled to payment. It would be explained to the buyer that the seller must bring the title to the dealership for the transaction to be completed. While the sales process is potentially slowed down, the option for the owner/seller to retain title ensures all parties are aware as to what is transpiring, as opposed to a dealer that could act improperly when he has both the title and the vehicle in his possession. Finally, the buyer is also protected

because he is aware that the vehicle is being sold on consignment and relinquishes his payment for the vehicle at the time that the delivery is made for both the vehicle and the title.

One additional note is that the reference to the dealer using an executed power of attorney in (b)(3) does not permit the dealer to sign on behalf of the seller on the back of the title. Federal odometer law restricts the dealer from signing as both the buyer and seller on a title or other secure paper document for odometer disclosure purposes even when using a power of attorney. The rationale was that this could promote odometer fraud where one person signs as both parties. The only exception to this is where the dealer uses a secure power of attorney to receive the odometer mileage disclosure from the seller. The dealer can then transfer that mileage and sign on behalf of the seller on the back of the title and then also sign on the back of the title as the buyer. Under federal law, the secure power of attorney can only be used in limited instances, and a consignment sale is not one of them. This section (b)(3) may need to be revised.

PAA appreciates the Board's willingness to entertain PAA's comments, though late in coming, and hopes that PAA can be of assistance as the Board further refines the wording. If you have questions regarding this matter, please do not hesitate to contact me at (717) 255-8311, ext. 3352.

Respectfully yours,



Peter K. Bauer  
General Counsel





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MAR 24 2003

DOS LEGAL COUNSEL

March 21, 2003

Ms. Teresa Woodall  
Board Administrator  
State Board of Vehicle Dealers  
Manufacturers and Salespersons  
P.O. Box 2649  
Harrisburg, PA 17105

Re: Proposed Regulations on Consignment Sales,  
Pa. Bulletin, Doc. No. 02-2229, Vol. 32, 32-50

Dear Ms. Woodall:

I am writing to you about the above-referenced proposed consignment sale regulations. Although this letter of comment is after the official comment period, I would appreciate if you and the Vehicle Board would consider the following comments that I make on behalf of PIADA.

I reproduce below the text of the proposed regulation, and I have highlighted in gray those portions about which we at PIADA are concerned. Our comments afterwards are referenced to the proposed section, subsection and paragraph's numbers and letters. Brackets "[ ]" indicate deletions; underlining " \_ " indicates insertions.

**§ 19.18a. Consignment sales.**

(a) A licensed dealer is permitted to engage in consignment sales without being licensed as a wholesale vehicle auction or public or retail vehicle auction, as defined in section 2 of the act (63 P. S. §§ 818.2), if the dealer meets the requirements of this section.

(b) The dealer shall maintain the following documents at the lot where the vehicle is displayed:

(1) A copy of a separate written consignment agreement with the consignor for each vehicle. The written consignment agreement shall contain the following information:

(i) The name and signature of the consignor.

(ii) The make, model, year, vehicle identification number and license plate number of the vehicle.

(iii) The length of the consignment period.

(iv) The terms of sale, including the minimum selling price, if any, and the amount of or formula for determining the dealer's commission.

(v) The terms of insurance coverage during the period of consignment, including the name, address and telephone number of the consignor's insurance agent, if any.

(vi) The express identification of any warranties extended by the consignor.

(vii) The name and address or telephone number of all current lien holders, together with the account number for each lien.

(viii) Any material facts relative to the vehicle, including accident history, vehicle condition and odometer disclosure.

(2) A copy of the current registration card or title.

(3) An executed power of attorney from the consignor to the dealer which authorizes the dealer to assign title of the vehicle.

(4) Either an unexecuted title, if the title is unencumbered, or a title release from each lien holder to pay off all liens, if the title is encumbered.

(c) The dealer shall have the title of the vehicle assigned from the consignor to the dealer prior to applying for title in the name of the buyer.

(d) Whenever a vehicle is displayed for sale on consignment, the dealer shall disclose in writing on or attached to the vehicle that the vehicle is held on consignment and is not owned by the dealer.

1. **Comment to 19.18a(b)(1):** For dealer to dealer consignments it does not seem necessary to have a separate agreement for each vehicle, as long as the required information appears for each vehicle on one form.

**Our suggested revision to 19.18a(b)(1) is as follows:**

(1) A copy of [a separate] the written consignment agreement with the consignor [for each vehicle]. The written consignment agreement shall contain for each consigned vehicle the following information: . . . .

2. **Comment to 19.18a(b)(1)(vii):** In the case of a consumer, would not inclusion of the consumer-consignor's lien account number be a breach of privacy? We do not believe that it would be wise to have people's account numbers shown to potential purchasers of the consigned vehicle.

**Our suggested revision to 19.18a(b)(1)(vii) is as follows:**

(vii) The name and address or telephone number of all current lien holders[, together with the account number for each lien].

3. **Comment to 19.18a(b)(1)(viii):** This section essentially imposes strict liability upon the selling dealer to know the entire prior accident history of the vehicle, which, for a used car, may simply be unknown by both the selling dealer and the consignor. Furthermore, this provision also has the effect of making it impossible to sell a consigned vehicle AS IS. As long as a dealer displays a supplemental AS IS disclosure prescribed by 37 Pa. Code §304.1(a)(9), consigned vehicles should also be permitted to be sold AS IS.

**Our suggested revision to 19.18a(b)(1)(viii) is as follows:**

(viii) Any known material facts relative to the vehicle, including accident history[,] and vehicle condition, if a warranty is offered, and an odometer disclosure statement.

**4. Comment to 19.18a(b)(4):** Section 19.18a(b)(2) already requires that the dealer maintain “A copy of the current registration card or title.” PIADA believes that the risk of fraud to the consignor (not getting paid by the selling dealer) is great if the dealer is entrusted with the *original* certificate of title. We believe that requiring a *copy* of the complete title, *front and back*, is the better solution. However, the Vehicle Board does have a legitimate concern about the buyer not receiving a certificate of title. Therefore, PIADA suggests below a specific remedy addressing this untoward possibility, rather than opening a different avenue for another type of fraud.

This section also appears to intend that all liens first be satisfied before a vehicle could be consigned for sale. This is not a realistic regulation, because no financial institution will provide a release, unless its lien has been satisfied first. We believe that the reference to “title release” in relation to paying off a lien may be confusing two or three separate documents. A “title release” is signed by the *vehicle owner* and directed to the lienholder authorizing the lienholder to mail the title directly to the selling dealer, rather than the vehicle owner named on the front of the title. An “authorization for payoff” is a document signed by the vehicle owner authorizing the lienholder to accept payment of the lien from the selling dealer. A “lien release” is a document signed by the lienholder releasing its lien on the title and security interest in the vehicle, *when the title itself is not in the possession of the lienholder* for some reason; otherwise, the lienholder simply signs the lien release section that appears on the front of a Pennsylvania certificate of title and mails it to the vehicle owner.

PIADA suggests that in the case of a vehicle with an encumbered title, the selling dealer shall have on file “a title release and authorization for pay-off” that the vehicle owner has signed. In addition, pursuant to federal law, in the case of an encumbered title within the possession of a lienholder, the selling dealer should also have on file a “secure power of attorney.” PIADA proposes amending paragraph (4) to reference the required “secure power of attorney” and adding paragraph (5) to address the “title release and authorization for pay-off.”

**Our suggested revision and addition to 19.18a(b)(4) are as follows:**

(4) Either a copy of the front and reverse of an unexecuted title, if the title is unencumbered, or, if the title is encumbered, an executed secure power of attorney [a title release from each lien holder to pay off all liens, if the title is encumbered].

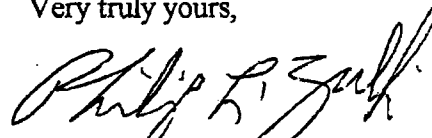
(5) A title release and authorization for pay-off, signed by the vehicle owner, authorizing the dealer to satisfy the lien and receive the title directly from the lienholder, which document or documents the selling dealer shall forward to each lienholder upon paying off all liens.

**Our suggested addition to 19.18a** is a subsection “(e)”, as a remedy to a dealer who fails to provide a title to the purchaser. We suggest adding the following provisions as subsection “(e)”:

(e) If a dealer sells a vehicle on consignment, but fails to satisfy the lien or deliver an assignment and warranty of title to the transferee within 90 days of the date of purchase, and this failure is the result of an act or omission by the dealer who sold the vehicle, the dealer who sold the vehicle shall accept return of the vehicle from the transferee and shall refund the purchase price less actual depreciation of the vehicle while it was within the possession of the transferee. In refunding the purchase price, the price shall include the listed dollar value of any trade-in vehicle as stated in the sales transaction document, in lieu of the dealer returning the transferee's trade-in vehicle. A dealer which refuses to accept return of the vehicle and refund the purchase price as required by this subsection shall be subject to discipline by the Board.

Please consider these comments. We at PIADA would appreciate the opportunity to discuss these regulations with you and representatives of the State Board of Vehicle Dealers, Manufacturers and Salespersons.

Very truly yours,



Philip L. Zulli, Esq.  
Interim Manager

Enclosures: (1)

cc: Edward J. Cernic, Jr., Chairperson,  
State Board of Vehicle Dealers, Manufacturers and Salespersons  
Thomas Blackburn, Counsel to the State Board of Vehicle Dealers, etc.  
Mary S. Wyatte, Chief Counsel, Independent Regulatory Review Commission  
Mark Singel, Public Affairs Management, LLC  
Joe Pantone, President, Pennsylvania Independent Automobile Dealers Association  
Vicki Hoover-Price, President-Elect, PIADA  
Tim Swift, Chairman of the Board, PIADA  
Ed Comas, Vice-President, PIADA



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

June 8, 2004

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

Re: Final Regulation  
State Board of Vehicle Manufacturers, Dealers and Salespersons  
16A-607: Consignment Sales

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to consumer-protection oriented requirements for licensed dealers to engage in consignment sales without holding a vehicle auction license.

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: Basil L. Merenda, Commissioner  
Bureau of Professional and Occupational Affairs  
Linda C. Barrett, Chief Counsel  
Department of State  
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-607  
 SUBJECT: Consignment Sales  
 AGENCY: DEPARTMENT OF STATE # 2317

**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

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 DEPARTMENT OF STATE  
 JUN 10 2004

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
6/8/04	<i>Wally Baerger</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
6/8/04	<i>Domc Herman</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
6/7/04	<i>Step J. [Signature]</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)