



# Regulatory Analysis Form

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2004 JUN -8 AM 11:46

REVIEW SUBMITTED

(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-605

IRRC Number: 2325

(3) Short Title

**Branch lots**

(4) PA Code Cite

49 Pa. Code § 19.17a

(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 rulemaking defines the phrase "used solely for storage" of Section 5(e)(1)(ii) of the Board of Vehicles Act (63 P.S. § 818.5(e)(1)(ii)), so that dealers are put on notice of when a branch lot license could be required for a location. The regulation permits a licensed vehicle dealer to store vehicles at an unlicensed location where no vehicle business activity takes place. The regulation would also permit a licensed vehicle dealer to place a single vehicle at an unlicensed location so long as the placement is in the nature of advertising, rather than displaying for the purposes of sale.**

## 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, 4(a) and 5(e)(1) of the Board of Vehicles Act (63 P.S. §§ 818.2, 818.4(a) and 818.5(e)(1)). In *Spankey's Auto Sales v. State Bd. of Vehicle Mfrs., Dealers and Salespersons*, 773 A.2d 206 (Pa. Cmwlth. Ct. 2001), the court held that the Board improperly disciplined a dealer for operating an unlicensed branch lot under Section 5(a)(1) of the Board of Vehicles Act, because the location did not contain an office and lot. The court did not consider whether the Board could have disciplined the dealer under Section 19(34) of the Board of Vehicles Act (63 P.S. § 818.19(34)), which prohibits a dealer from conducting business at any location other than that authorized by its license.**

(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 regulation promotes the public interest by clarifying the phrase "used solely for the storage of vehicles" in the Board of Vehicles Act so that dealers understand how to comply with the law. Consistent with the Board of Vehicles Act, the regulation sets out requirements that prohibit a dealer from conducting any sales activity at an unlicensed location.**

**The regulation clarifies the circumstances under which the placement of a vehicle in a public place is the advertisement, rather than the display for sale, of the vehicle. The amendment addresses the public interest by assisting dealers with conforming their activities to the Board of Vehicles Act and by preventing sales activity at unlicensed locations.**

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

**The Board of Vehicles Act requires licensure for locations from which sales activity is conducted in order to permit the Board to regulate the display and sale of vehicles to promote consumer protection and public safety. Nonregulation in this area would lead to additional violations by dealers attempting to increase their business despite restrictions in the Board of Vehicles Act.**

## Regulatory Analysis Form

(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 display a vehicle in a high traffic area and to store vehicles in a manner that does not conflict with the Board of Vehicles Act. There are approximately 8700 licensed vehicle dealers in the Commonwealth who will be affected by the rulemaking. The general public will benefit from the restrictions because they comply with consumer protection and public safety provisions of the Board of Vehicles Act that prohibit sales activity at unlicensed locations.**

(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 or store vehicles in an unlicensed location 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 various dealer and industry groups for comment: The 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.**

(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 single vehicle display. Minimal costs may be associated with meeting the requirements for placing vehicles at a storage lot, in that the regulation requires a sign denoting that the area is for storage only.**

(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.**

## Regulatory Analysis Form

(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
	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
<b>SAVINGS:</b>						
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

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

**Minimal costs may be incurred by the regulated community in complying with the sign requirements for an unlicensed location where vehicles are stored. Because the regulated community is not required to take any other actions to comply with the rulemaking, the Board anticipates that there will be no other costs incurred in complying with the rulemaking.**

## Regulatory Analysis Form

(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 expenditure by dealers 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, because the rulemaking interprets the Board of Vehicles Act and sets forth binding rules of conduct.**

(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.**

(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 rulemaking will allow Pennsylvania dealers to store or display vehicles, subject to conditions, at unlicensed locations, giving them a competitive advantage over dealers in states that do not permit such activity. For example, dealers in Delaware, Maryland, Ohio and West Virginia may display only at the licensed location. Dealers in New York may display vehicles at an unlicensed location only if no sales personnel or employees are present.**

## Regulatory Analysis Form

(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 website (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.**

(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, 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 AM

REVIEW SUBMISSION

(Pursuant to Commonwealth Documents Law)

# 2325

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)

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

DOCUMENT/FISCAL NOTE NO. 16A-605

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

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

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

5/24/04  
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 § 19.17a  
Branch Lots

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) adds § 19.17a (relating to branch lots) to read as set forth in Annex A.

### Description and Need for Rulemaking

The rulemaking adds § 19.17a to set forth the general rule that any location where a dealer has placed vehicles must be licensed and to set forth standards for determining whether a location where a dealer has placed vehicles is a storage lot or an advertisement, as opposed to the offering for sale of those vehicles, and need not be licensed.

### Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 33 Pa.B. 1124 (March 1, 2003) with a 30-day public comment period. The Board received comments from the Pennsylvania Automotive Association (PAA). The Board also 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.

PAA commented that it “is in agreement with the proposed regulations as presented.”

HPLC and IRRC both suggested that this regulation should be included under the heading of “dealership license,” because it specifically addresses dealers, rather than under “general provisions.” The Board agrees and has renumbered the regulation as § 19.17a.

IRRC commented that the language used in subsections (b)(3), (4), (6) and (7) to distinguish a storage lot from a sales lot expresses the negative in the actor, although the negative should be with the action. The Board has revised these portions of the regulation in accordance with this comment.

IRRC also commented that subsection (b)(8) should clarify that the dealer may not provide a telephone or other means for a customer to contact the dealer from the unlicensed location. The Board agrees and has revised subsection (b)(8) to preclude the dealer from providing potential customers at the unlicensed location with any means to communicate with the dealer about the vehicles stored there. Additionally, the Board has revised this subsection to express the negative with the action, as discussed in the previous comment.

HPLC questioned the Board’s authority to promulgate subsection (c). Subsection (c)(1) states that certain actions will not be considered to be “buying, selling or exchanging” vehicles, as defined in section 2 of the Board of Vehicles Act (63 P.S. § 818.2). Because the definition of “buying, selling or exchanging” includes advertising and all sales activity is to occur at the licensed dealership facility, HPLC questioned whether the Board has authority to create such an exemption. In drafting both subsections (b) and (c), the Board intended to create a safe harbor for dealers to know on what terms the display of a vehicle will be considered to be storage or merely advertising,



respectively, (and may be done away from a licensed facility) and not the offering for sale (that must be done only at a licensed facility). The Board considers the display of a vehicle under the terms of subsection (c) to be merely a three-dimensional “billboard” that may be placed anywhere for public view of the advertising.

Both HPLC and IRRC suggested that subsection (c) include a requirement that the dealer post a sign with the single vehicle display stating that the vehicle is for display only and that no sales transaction may occur at the display site. The Board has revised the regulation to incorporate this suggestion.

Subsection (c)(1)(v) prohibits a single vehicle display from having “sales agreement forms or other documents routinely used in vehicle sales transactions.” IRRC commented that the Board should identify these other documents. In response, the Board has revised this subsection to read, “There are no sales forms present at the location.” IRRC also commented that subsection (c)(1)(vi) should make clear that it is the dealer’s responsibility to ensure that the vehicle is locked and that the public is unable to gain entry. The Board agrees that this is the dealer’s responsibility and, in response to this comment, has revised subsection (c)(1)(vi) to read, “The dealer has secured the vehicle so that it is not capable of being operated....”

Finally, IRRC questioned why in subsection (c)(2) the Board explicitly excluded the display of recreational vehicles, mobile homes or manufactured housing from a regulation that is not applicable to these types of vehicles. Subsection (c)(2) was drafted to clearly demarcate those segments of the vehicle sales industry that are subject to this regulation from those that are not.

#### 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, 4(4), 4(9) and 5(e) of the Board of Vehicles Act (63 P.S. §§ 818.2, 818.4(4), 818.4(9) and 818.5(e)).

### Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on March 1, 2003, the Board submitted a copy of the notice of proposed rulemaking, published at 33 Pa.B. 1124, 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 the 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](mailto: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. 1124.

### Order

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

- (a) The regulations of the Board at 49 Pa. Code § 19.17a are added 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

\* \* \*

GENERAL PROVISIONS DEALERSHIP LICENSE

\* \* \*

§ 19.5 19.17A. Branch lots.

(a) Facility. Unless otherwise exempted by the act or this chapter, any location where a licensed vehicle dealer displays or offers vehicles for sale shall be licensed and comply with the facilities requirements set forth in the act and § 19.18 (relating to established place of business for dealers).

(b) Storage of vehicles. The storage of vehicles by a licensed vehicle dealer at an unlicensed location will not be considered to be the display or offer for sale of vehicles at that location if:

(1) The lot is used solely for the storage of vehicles.

(2) The lot is identified by a sign with the dealership name and a designation that the lot is for "storage only." The area may not otherwise be identified.

(3) ~~No~~ A salesperson is present at the lot ~~other than~~ ONLY as necessary to repair, recondition, inspect or move any of the vehicles.

(4) ~~No~~ A salesperson PRESENT AT THE UNLICENSED LOCATION DOES NOT ENGAGE ~~engages~~ in any demonstration or discussion of product features of the vehicles ~~or~~

~~discusses~~ AND DOES NOT DISCUSS any terms of sale.

(5) The public is not permitted access to any of the vehicles at the lot and the vehicles are not capable of being entered or operated (other than by criminal acts).

(6) ~~No~~ A sign or other marking at the lot or on any of the vehicles at the lot (except for a federally-mandated manufacturer's price sticker) indicates DOES NOT INDICATE that any of the vehicles at the lot are available for sale at any other location.

(7) ~~No literature~~ LITERATURE, such as business cards or brochures, is NOT available for potential customers to remove from the lot.

(8) ~~Potential customers are not able to communicate with a representative of the dealer from the lot, by telephone, e-mail, computer or otherwise~~ THE DEALER HAS PROVIDED A POTENTIAL CUSTOMER AT THE LOT WITH NO MEANS, SUCH AS TELEPHONE, E-MAIL OR INTERNET WEBSITE, to negotiate the sale of, to obtain additional information concerning, or to otherwise discuss the vehicles at the unlicensed lot or other vehicles available for sale by the dealer.

(c) *Single vehicle display.*

(1) The placement of a single vehicle before the public will not be considered the buying, selling or exchanging of the vehicle, as defined in section 2 of the act (63 P.S. §818.2), if:

(i) The placement is by a vehicle dealer licensed in this Commonwealth.

(ii) No more than one vehicle is placed at the location.

(iii) A salesperson present at the location does not discuss the features of the vehicle or other vehicles handled by the dealership and does not negotiate or conclude the sale of the vehicle or another vehicle of the dealer.

(iv) There is no sales office at the location.

(v) There are no sales agreement forms or other documents routinely used in vehicle sales transactions present at the location.

(vi) The DEALER HAS SECURED THE vehicle is locked or otherwise SO THAT IT IS not capable of being entered or operated by potential customers or others (other than by criminal acts).

(vii) The location is not at the licensed premises of any vehicle dealer or vehicle auction.

(VIII) A SIGN IS POSTED THAT IDENTIFIES THE VEHICLE AS FOR DISPLAY ONLY AND NOT FOR SALE AT THAT LOCATION.

(2) This subsection shall apply to the placement of automobiles, light trucks and motorcycles, but shall not apply to the placement of recreational vehicles, mobile homes, manufactured housing, and other vehicles not identified in this paragraph.

(b) Contact lens prescriptions shall specify the lens type, the specifications necessary for the ordering and fabrication of the lenses, number of refills and expiration date consistent with the type and modality of use of the contact lens being prescribed, but in no case shall the expiration date be greater than 1 year. The prescription may include a statement of caution or a disclaimer if the statement or disclaimer is supported by appropriate findings and documented in the patient's medical record.

(c) Pharmaceutical prescriptions shall specify the name of the drug prescribed, quantity and potency prescribed, expiration date, number of refills allowed, instructions for use and any indicated precautionary statements.

(d) Spectacle prescriptions shall specify any information that would be relevant to manufacturing glasses including the dioptic value of the sphere, astigmatism, prism, slab off, add power and axis or orientation of the astigmatism correction.

[Pa.B. Doc. No. 03-351. Filed for public inspection February 24, 2003, 9:00 a.m.]

## STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Branch Lots

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to add § 19.5 (relating to branch lots) to read as set forth in Annex A.

The proposed rulemaking would inform licensees of the conditions under which a licensed dealer may keep vehicles at an unlicensed location used only for storage purposes and the conditions under which a licensed dealer may exhibit a single vehicle at an unlicensed location.

### *Effective Date*

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

### *Statutory Authority*

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

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

#### *Storage of Vehicles*

Section 5(e)(1)(ii) of the act (63 P. S. § 818.5(e)(1)(ii)) provides that "[a] branch lot shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles." As space to park vehicles has become a premium commodity, dealers have developed storage lots that are separate and apart from their dealership facilities. Licensees, the Pennsylvania Independent Automobile Dealers Association (PIADA) and

law enforcement agents have asked the Board to promulgate a regulation further defining "used solely for the storage of vehicles" so that dealers may comply with the act and law enforcement agents may enforce the act. The Board's proposed rulemaking would define storage of vehicles in relation to engaging in the business of a vehicle dealer in a way that is consistent with public protection concerns that prohibit a dealer from conducting sales activity at an unlicensed location.

#### *Single Vehicle Display*

Individual licensees and PIADA have asked the Board to clarify whether the placement of a single vehicle at an unlicensed location is always the display of that vehicle for sale, and therefore prohibited, or whether the placement of a single vehicle at an unlicensed location may, under certain circumstances, be considered permissible activity. The licensees' concern arises because many shopping malls approach licensees to place automobiles in the shopping mall. PIADA has informed the Board that this type of vehicle display is permitted in states surrounding this Commonwealth and that Commonwealth dealers believe they are at a competitive disadvantage because the act requires vehicles to be displayed at licensed locations. Some surrounding states permit single vehicle displays at unlicensed locations: provided the dealer is issued a special permit for the display. The Board proposes to make a distinction between display for sale which may only occur at a licensed location and other single vehicle display. This distinction will permit a licensed dealer to place a single vehicle at an unlicensed location.

Section 19(34) of the act (63 P. S. § 818.19(34)) authorizes the Board to discipline a dealer who "conducts its business . . . at any other location than that authorized by its license." Under section 2 of the act (63 P. S. § 818.2), a dealer is a person "who is engaged in the business of buying, selling or exchanging new or used vehicles or an interest in new or used vehicles." Section 2 of the act also defines "buying, selling or exchanging" to "include listing, offering, auctioning, advertising, representing or soliciting, offering or attempting to solicit or negotiate on behalf of another a sale, purchase or exchange or any similar or related activity."

With those definitions in mind, clearly the General Assembly did not intend to prohibit all advertising at a location other than the licensed location; a ban would prohibit highway billboards, sideboard advertisements at sporting events and adboards on buses and subways. The General Assembly must have intended to prohibit only activities directly related to buying, selling or exchanging vehicles at locations other than the dealer's licensed location.

Section 19.18(a)(3) (relating to established place of business for dealers) defines a dealer's display area as a place "where the public is permitted and invited in the regular course of business to inspect or test drive . . . vehicles . . . offered for sale." Section 19.18(a)(3) goes on to describe what requirements a "display area" must meet. These requirements include, among other things: adequate space to display and show no fewer than five vehicles; grading, surface and lighting requirements; requirements that the area be separated from other businesses; and requirements that the area have a telephone line, a sign showing the licensed name of the dealer and conspicuously posted business hours. Clearly, places such as a mall or someone's front yard are not "display areas" under the Board's regulations. Proposed § 19.5(c) reinforces the distinction between "display ar

as defined by § 19.18(a)(3) and an area where a vehicle is parked for use as an advertisement.

The Board has set the display limit at one vehicle to reduce consumer confusion. A consumer encountering one car on display at the county fairgrounds or local shopping mall is likely to consider that car an advertisement and will not be confused, disappointed or surprised to find that the car cannot be "inspected" as it could at a licensed location. By comparison, a consumer encountering several cars on display at a county fairground or shopping mall may reasonably expect to be able to inspect the displayed vehicles. This expectation is reasonable because several cars displayed together resemble a sales lot, whereas one car resembles a three-dimensional billboard.

The Board is cognizant of the concern expressed by many dealers that the prohibition against conducting business at other than the licensed location places Commonwealth dealers at a competitive disadvantage compared with dealers in other states. Dealers wish to display vehicles in high traffic areas, such as shopping malls, or at special events, such as fairs, which draw large numbers of potential customers. The Board must balance the needs of this Commonwealth's licensed dealers with the needs of consumers and must resolve all disputes in light of its primary mission: to protect the public. Allowing a dealer to place a single vehicle at an unlicensed location, provided that no sales activity is conducted at that location, would not conflict with statutory requirements because the dealer would not be conducting business at the unlicensed location. In addition, restricting dealers to placing a single vehicle at an unlicensed location would not undermine the purposes of the act. The Board therefore proposes to amend its regulations to permit a dealer to place a single vehicle at an unlicensed location, with specific conditions to ensure that no sales activity occurs at the unlicensed location.

*Description of Proposed Rulemaking*

*Storage of Vehicles*

The proposed rulemaking defines storage of vehicles in contrast to the display or offer for sale of vehicles. A location is used solely for storage if it is identified as a storage-only lot, if no salespersons are present at the lot to converse with potential customers, if the vehicles are not demonstrated for customers at the lot, if the public is not permitted access to the vehicles, if the dealer does not advertise his or her name or other, licensed, locations at the lot and if potential customers may not acquire sales literature at the lot and cannot communicate with the dealer or his representative from the lot.

*Single Vehicle Display*

The proposed rulemaking requires that an unlicensed area used for display of a single vehicle may not contain the following: (1) more than one vehicle and the vehicle displayed must be locked at all times; (2) salespeople; (3) a sales office; and (4) sales agreement forms or other documents routinely used in vehicle sales transactions. This list reinforces the definition of "display area" given in § 19.18(a)(3) in two ways. First, by not permitting inspection or test-driving of vehicles or dissemination of sales literature, this proposed rulemaking strives to reduce consumer confusion. A consumer encountering a car in a mall is more likely to consider the car an advertisement and not an item for sale if that consumer is unable to enter the vehicle or obtain sales information. Second, by clearly spelling out what may not be present in an area if the dealer wishes to display a car without licensing the area, § 19.5(c) clarifies the rather lengthy definitions in § 19.18(a)(3).

*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 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 February 12, 2003, 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. 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 30 days of the close of the Committees' public comment 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, Administrative Assistant, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649, vehicle@pados.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. CERNIC, Jr.,  
Chairperson

**Fiscal Note:** ~~19.5(c)~~ 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**

**GENERAL PROVISIONS**

**§ 19.5. Branch lots.**

(a) *Facility.* Unless otherwise exempted by the act or this chapter, any location where a licensed vehicle dealer displays or offers vehicles for sale shall be licensed and comply with the facilities requirements set forth in the act and § 19.18 (relating to established place of business for dealers).



(b) *Storage of vehicles.* The storage of vehicles by a licensed vehicle dealer at an unlicensed location will not be considered to be the display or offer for sale of vehicles at that location if:

- (1) The lot is used solely for the storage of vehicles.
- (2) The lot is identified by a sign with the dealership name and a designation that the lot is for "storage only." The area may not otherwise be identified.
- (3) No salesperson is present at the lot other than as necessary to repair, recondition, inspect or move any of the vehicles.
- (4) No salesperson engages in any demonstration or discussion of product features of the vehicles or discusses any terms of sale.
- (5) The public is not permitted access to any of the vehicles at the lot and the vehicles are not capable of being entered or operated (other than by criminal acts).
- (6) No sign or other marking at the lot or on any of the vehicles at the lot (except for a Federally-mandated manufacturer's price sticker) indicates that any of the vehicles at the lot are available for sale at any other location.
- (7) No literature, such as business cards or brochures, is available for potential customers to remove from the lot.
- (8) Potential customers are not able to communicate with a representative of the dealer from the lot, by telephone, e-mail, computer or otherwise, to negotiate the sale of, to obtain additional information concerning, or to otherwise discuss the vehicles at the unlicensed lot or other vehicles available for sale by the dealer.

(c) *Single vehicle display.*

(1) The placement of a single vehicle before the public will not be considered the buying, selling or exchanging of the vehicle, as defined in section 2 of the act (63 P.S. § 818.2), if:

(i) The placement is by a vehicle dealer licensed in this Commonwealth.

(ii) No more than one vehicle is placed at the location.

(iii) A salesperson present at the location does not discuss the features of the vehicle or other vehicles handled by the dealership and does not negotiate or conclude the sale of the vehicle or another vehicle of the dealer.

(iv) There is no sales office at the location.

(v) There are no sales agreement forms or other documents routinely used in vehicle sales transactions present at the location.

(vi) The vehicle is locked or otherwise not capable of being entered or operated by potential customers or others (other than by criminal acts).

(vii) The location is not at the licensed premises of any vehicle dealer or vehicle auction.

(2) This subsection applies to the placement of automobiles, light trucks and motorcycles, but does not apply to the placement of recreational vehicles, mobile homes, manufactured housing and other vehicles not identified in this subsection.

[Pa.B. Doc. No. 03-352. Filed for public inspection February 28, 2003, 9:00 a.m.]

**Comments of the Independent Regulatory Review Commission**

on

**State Board of Vehicle Manufacturers, Dealers and Salespersons  
Regulation No. 16A-605**

**Branch Lots**

**April 30, 2003**

We submit for your consideration comments that include references 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.

**1. General. – Clarity.**

We have two general concerns with this regulation.

The House Professional Licensure Committee (House Committee) has questioned the appropriateness of placing this subchapter under the "General Provisions" heading of the current regulations. Since the subject matter of the proposed regulation specifically addresses dealerships, we agree and suggest that the Board move this proposed subchapter under the "Dealership License" heading of the current regulations.

Second, Subsection (c)(2) of Section 19.5 states that this regulation does not apply to the placement of recreational vehicles, mobile homes or manufactured housing. Why did the Board provide for these exclusions in a regulation that isn't applicable to the mentioned products? The Board should delete this provision, or explain why it is needed.

**2. Section 19.5. Branch lots. – Clarity.**

*Subsection (b) Storage of vehicles.*

Subsections (b)(3), (4), (6) and (7) begin with the phrases, "No salesperson..., no sign..., no literature..." This language expresses the negative in the actor. However, the negative in this instance belongs with the action, not the actor. Therefore, the Board should change the language in these subsections, placing the negative with the verb, and not with the subject of the sentence.

Subsection (b)(8) requires that "potential customers are not able to communicate with a representative of the dealer from the lot, by telephone, e-mail, computer or otherwise...." The Board should clarify in this provision that the dealer may not provide a telephone, computer or other means of communication for the customer to contact the dealer from the unlicensed lot.

*Subsection (c) Single vehicle display.*

We have three concerns with this subsection.

First, the House Committee has suggested that this subsection should include a provision that requires a dealer to place a sign indicating that the vehicle is for display only, including notice that sales negotiations or transactions may not occur at the site. We agree.

Second, Subsection (c)(1)(v) contains the phrase "other documents." To what other documents does this phrase refer? To facilitate compliance and improve clarity, this phrase should be replaced with specific references.

Finally, Subsection (c)(1)(vi) requires that "the vehicle is locked or otherwise not capable of being entered...." This sentence should emphasize that it is the dealer's responsibility to ensure that the vehicle is locked and that the public is unable to gain entry in any manner.

## Regulation 16A-605

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

**PROPOSAL:** Regulation 16A-605 amends 49 PA Code, Chapter 19, regulations of the State Board of Vehicle Manufacturers, Dealers and Salespersons. The amendment adds new Section 19.5, Branch Lots, setting forth the criteria under which a dealer may maintain an unlicensed location for the storage of vehicles, and under which a single vehicle may be displayed at an unlicensed location.

The proposed Rulemaking was published in the Pennsylvania Bulletin on March 1, 2003.

**ANALYSIS:** Pursuant to Sec. 5(e)(1)(ii) of the Board of Vehicles Act, (P.L. 306, No. 84), a dealer's branch lot "shall be a separately licensed location which meets the facility requirements defined herein and by the regulations as a main lot, unless used solely for the storage of vehicles." The Board's proposed Sec. 19.5(b) sets forth 8 conditions that must be complied with if a lot or location is to be considered a storage facility and thereby exempt from licensure. These conditions include the requirement that the lot is used solely for the storage of vehicles; that the lot is identified by a sign reading for "storage only;" no salespersons are present other than is necessary to repair, recondition, inspect or move any of the vehicles; the public is not permitted access to any of the vehicles; and no sign is present at the lot to indicate that any vehicles at the lot are available for sale at any other location.

Proposed Sec. 19.5c sets forth 7 conditions that must be met to permit a dealer to display a single vehicle (automobile, light truck or motorcycle only) at a location other than the dealer's premises or licensed branch lot. These conditions include the requirement that the placement is by a vehicle dealer licensed in this Commonwealth; that no more than one vehicle is placed at the location; that there is no sales office at the location; and that the vehicle is locked or otherwise not capable of being entered or operated by potential customers.

**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. The Committee questions the placement of the proposed regulation in the "General Provisions" section of the Board's regulations. The Committee suggests that since the subject matter of the proposed regulation involves dealerships, the "Dealership License" section would be more appropriate.
2. The Committee questions the Board's authority to promulgate proposed Sec. 19.5c. The display of a single vehicle constitutes advertising, an activity that is included in the definition of "buying, selling or exchanging" set forth in the Board of Vehicles Act. Except for limited circumstances set forth in the Act, the selling of a vehicle must occur

on the dealer's business premises. Does the Board have the authority to create an exemption for one-vehicle displays?

3. The Committee suggests that should the Board have the authority to promulgate Sec. 19.5c, then it should include a provision to require the dealer to place a sign at the display location, indicating that the vehicle is for display only, that transactions or sales discussions cannot occur at the site, and referring the public to the relevant dealer.

House of Representatives  
Professional Licensure Committee  
April 2, 2003



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-605: Branch Lots

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to the definition of the phrase "used solely for storage" of Section 5(e)(1)(ii) of the Board of Vehicles Act (63 P.S. § 818.5(e)(1)(ii)), so that dealers are put on notice of when a branch lot license could be required for a location.

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-605  
SUBJECT: Branch Lots  
AGENCY: DEPARTMENT OF STATE # 2325

**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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**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
6/8/04	<i>Walter Buzioff</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
6/8/04	<i>Dona Hanna</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
6/8/04	<i>Steph J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
		LEGISLATIVE REFERENCE BUREAU (for Proposed only)