

Regulatory Analysis Form

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IRRC REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational Affairs, State Board of Vehicle Manufacturers, Dealers and Salespersons

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

16A-608

IRRC Number: 2471

(3) Short Title

Protest proceedings

(4) PA Code Cite

49 Pa. Code §§ 19.3, 19.31-19.38

(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 sets forth procedures to be followed in litigating vehicle protest matters before the Board. These procedures supplement the General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 35.1-35.251), which section 8(b) of the Board of Vehicles Act (63 P.S. § 818.8(b)) and existing § 19.3 of the Board's regulations require the Board to follow.

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

The rulemaking is adopted under sections 4(a)(9), 7, 8, 13 and 27 of the Board of Vehicles Act (63 P.S. §§ 818.4(a)(9), 818.7, 818.8, 818.13 and 818.27).

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(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.

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

The Board follows the GRAPP in conducting hearings. Because the GRAPP do not completely set forth all procedures that the Board will follow in protest matters, the orderly administration of justice requires that the Board set forth rules of procedure.

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

In the absence of rules of procedure, the parties and their various counsel cannot know those additional procedures to be followed in adjudicating a protest matter, and the Board's protest counsel has had to issue an order setting forth those procedures in each protest matter.

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

The Board and licensees litigating protest matters before the Board will benefit from the clarity in procedural requirements provided by the rulemaking.

(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 group of individuals or entities that 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 licensed vehicle dealers, manufacturers and distributors litigating protest matters before the Board will be required to comply with the rulemaking.

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(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.

In June, 2003, the Board solicited exposure draft comments from all attorneys who had participated in vehicle protest hearings before the Board from August, 1999, to the present. The Board received pre-draft comments from McNees Wallace & Nurick and the Pennsylvania Automotive Association. The Board incorporated these comments into its rulemaking.

(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.

There are no costs to members of the regulated community associated with compliance with the rulemaking. There will be a small savings resulting from the increased clarity of procedural requirements.

(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 05-06	FY+1 06-07	FY+2 07-08	FY+3 08-09	FY+4 09-10	FY+5 10-11
SAVINGS:						
Regulated Community						
Local Government						
State Government						
Total Savings	N/A	N/A	N/A	N/A	N/A	N/A
COSTS:						
Regulated Community						
Local Government						
State Government						

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Total Costs	N/A	N/A	N/A	N/A	N/A	N/A
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	N/A	N/A	N/A	N/A	N/A	N/A

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

Not applicable.

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

Program	FY-3 (FY 02-03)	FY-2 (FY 03-04)	FY-1 (FY 04-05)	Current FY (FY 05-06)
Pa. State Board of Vehicle Manufacturers, Dealers and Salespersons	\$1,437,000	\$1,587,000	\$1,756,000	\$1,903,000

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

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any cost.

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

Currently, the Board issues various procedural orders in each protest matter in order to effectuate the requirements of the rulemaking. This requires an expenditure of effort by the Board's protest counsel and increases the likelihood of inconsistency among different matters. Counsel representing litigants do not know in advance the requirements to be imposed during the litigation of a given protest matter. Accordingly, the Board rejected this method. The Board considered no other 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.

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(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 states of Delaware, Maryland, New Jersey, New York, Ohio and West Virginia all provide an administrative body to adjudicate certain franchise disputes between new vehicle dealers and their manufacturers, with various rules of procedure for litigating these disputes. The rulemaking will not put Pennsylvania at a competitive disadvantage.

(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 rulemaking will have no effect on other regulations of the Board or other state agencies.

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

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

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

No.

(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.

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

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

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

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

§ 15.79. Reporting of hours spent in continuing education.

An applicant for license renewal shall provide the following information for each course attended [on Board-provided forms]:

* * * * *

[Pa.B. Doc. No. 05-767. Filed for public inspection April 22, 2005, 9:00 a.m.]

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]
Protest Proceedings

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) proposes to amend § 19.3 (relating to applicability of general rules) and to add §§ 19.31—19.38 (relating to protest proceedings) to read as set forth in Annex A.

Effective Date

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

Statutory Authority

The proposed rulemaking is authorized under sections 4(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (act) (63 P. S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Background and Need for the Amendment

The act authorizes a dealer holding a franchise with a manufacturer or distributor to file a protest with the Board of the manufacturer/distributor's termination of the dealer's franchise under section 13 of the act, the establishment or relocation of a franchise for the same line-make within the dealer's relevant market area under section 27 of the act or any alleged violation of the act by the manufacturer/distributor under section 8(d) of the act. Section 8(b) of the act requires the Board to follow 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP) in conducting hearings and existing § 19.3 incorporates the GRAPP into all proceedings before the Board. Because the GRAPP cannot completely set forth all procedures that are appropriate for the Board to follow in protest matters, the orderly administration of justice requires that the Board set forth rules of procedure. Currently, the Board's protest counsel issues an order setting forth procedures in each protest matter that is filed with the Board. The adoption of regulations regarding protest proceedings will provide uniform rules of procedure and give needed guidance to affected dealers and their representatives who anticipate filing protests with the Board and to manufacturers, distributors and their representatives.

Description of the Proposed Amendments

Under current practice, because of the strict time limitation in adjudicating protest matters under section 8(a) of the act, all papers are filed with the Board's protest counsel. By contrast, all papers in all other

matters that the Board adjudicates are filed with the prothonotary for the Department of State. Because the parties generally waive that time limitation until a date certain to permit timely adjudication by the Board, the Board has found that any time saved by filing papers in a protest matter with protest counsel is negligible. Therefore, to be consistent and to provide for greater assurance of the integrity of filed papers, proposed § 19.31 (relating to filing of papers) would require that all papers to be filed in a protest matter be filed with the prothonotary and that a copy be served upon the Board's protest counsel.

Because a protest by definition is a complaint by a dealer about an action taken by the manufacturer/distributor, proposed § 19.32 (relating to initiation of a protest) would require the dealer to append to its protest petition a copy of any notice of the manufacturer's/distributor's action and to serve a copy of the protest on the representative of the manufacturer/distributor who provided that notice. In general and in the absence of an entry of appearance by counsel, the Board will serve its order for stay and mediation under section 11(a)(3) of the act upon the person who provided the notice and upon whom the protesting dealer served a copy of the protest.

In matters protesting the establishment or relocation of a franchise, the dealer who is to be awarded the franchise or relocate generally has an interest in the outcome of that protest that would qualify that dealer for intervenor status. Proposed § 19.33 (relating to intervention) would permit that dealer to intervene upon the filing of a notice of intervention. All other parties seeking to intervene will have to continue to follow the procedures of the GRAPP in 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

Section 11(a) of the act requires a dealer to demand mediation prior to bringing a protest matter, except for dealers of motorcycles, and the Board must stay proceedings in a protest matter for the parties to engage in mediation. Because the majority of protest matters are resolved during mediation, the Board has not required a manufacturer/distributor to answer the protest during mediation. Instead, unless mediation is not required, the Board has waited until it is notified by the parties that mediation has been unsuccessful before issuing a scheduling order. Proposed § 19.34 (relating to time for adjudication) would continue this practice, with the Board setting the scheduling order so that it will be able to issue its adjudication within the time limitations of section 8 of the act. The parties may waive these time limitations, and the Board will treat a waiver as a request for a continuance. Proposed § 19.34 will also require a party requesting a continuance or extension of time to file a waiver of the time limitations sufficient to permit the Board to adjudicate the matter consistent with the requested extension. Because the time limitations are for the benefit of the manufacturer/distributor, the Board cannot grant a request for extension of time or continuance for which the manufacturer does not sign the waiver, but the Board may grant a request for which the protesting dealer does not sign the waiver.

Additionally, while the parties engage in mediation, there is no need for the respondent to file an answer to the protest. Under proposed § 19.35 (relating to subsequent pleadings), the Board's scheduling order will direct the respondent, and an intervenor on behalf of the respondent, when to file an answer. The protestant, and an intervenor on behalf of the protestant, may reply to the new matter within 10 days of service of the answer.

Because protest matters are quite complex and involve many documents and expert witnesses, in every case to be heard the Board will schedule a prehearing conference and require the parties to file prehearing statements. Proposed § 19.36 (relating to prehearing statements) would set forth the requirements for prehearing statements, including statements of facts and relevant law, as well as identification of all anticipated witnesses, including a report and curriculum vitae of any expert witness who is to testify, and copies of all anticipated exhibits. A party will be permitted to supplement its prehearing statement any time prior to the prehearing conference, but may not present any documentary exhibit or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown. Additionally, a party that failed to timely file a prehearing statement in accordance with § 19.36 would be subject to sanctions. These sanctions may include preclusion from offering evidence that should have been presented in the prehearing statement.

Proposed § 19.37 (relating to prehearing conference) would follow the current practice of conducting the prehearing conference by telephone initiated by protest counsel. Additionally, because a prehearing conference is a legal proceeding under the direction of protest counsel without members of the Board present, proposed § 19.37 would confirm that protest counsel has all authority of a presiding officer at a prehearing conference under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

Finally, proposed § 19.38 (relating to posthearing briefs) would require posthearing briefs to conform to the requirements of the GRAPP in 1 Pa. Code § 35.192 (relating to content and form of briefs). Because the Board must reproduce for all its members for their review the entire transcript and all exhibits, as well as the briefs, § 19.38 would prohibit posthearing briefs from including copies of the transcript or exhibits. Consistent with the GRAPP in 1 Pa. Code § 35.191 (relating to proceedings in which briefs are to be filed), the general practice of the Board has been to require the simultaneous filing of posthearing briefs, and § 19.38 would permit parties to file a reply brief within 7 days of the filing of an opposing party's posthearing brief.

Public Input

The Board solicited input from and provided an exposure draft of this proposed rulemaking to industry organizations, including those involved in prior protest matters before the Board. In addition, the Board considered the impact the regulations would have on the regulated community and on public health, safety and welfare. The Board finds that the proposal addresses a compelling public interest as described in this preamble.

Fiscal Impact and Paperwork Requirements

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

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on March 29, 2005, the Board submitted

a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. 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 comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, Administrator, State Board of Vehicle Manufacturers, Dealers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105-2649 within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Reference No. 16A-608 (protest proceedings), when submitting comments.

EDWIN K. GALBREATH, Jr.,
Chairperson

Fiscal Note: 16A-608. 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

§ 19.3. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) (**general rules**), is applicable to the activities of and proceedings before the Board. **Sections 19.31—19.38 (relating to protest proceedings) supplement the general rules.**

PROTEST PROCEEDINGS

§ 19.31. Filing of papers.

(a) *Place of filing.* Every pleading and other paper in a protest matter shall be filed with the prothonotary for the Department of State at One Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, PA 17105-2649.

(b) *Copies.* An original and one copy of each paper shall be filed with the prothonotary. A copy of each paper shall be served on each party to the protest. An additional copy of each paper shall be served on the Board's counsel for protest matters (protest counsel) at One Penn Center, 2601 North Third Street, P. O. Box 2649, Harrisburg, Pennsylvania 17105-2649.

§ 19.32. Initiation of a protest.

(a) *Protest petition.* The protest must be in petition form and set forth in numbered paragraphs the material

facts sufficient to justify relief to the protestant, in accordance with 1 Pa. Code § 35.17 (relating to petitions generally).

(1) The protest shall have appended to it a copy of any demand for mediation required by section 11(a) of the act (63 P. S. § 818.11(a)).

(2) A protest filed under section 8(d) of the act (63 P. S. § 818.8(d)) shall have appended to it a copy of any notice of the action that is being protested.

(3) A protest filed under section 13 of the act (63 P. S. § 818.13) shall have appended to it a copy of any notice of intent to terminate a franchise.

(4) A protest filed under section 27 of the act (63 P. S. § 818.27) shall have appended to it a copy of any notice of establishment or relocation of a franchise.

(b) *Service of the protest.* A copy of the protest shall be served on the representative of the manufacturer or distributor (respondent) who provided any notice, as set forth in subsection (a), of the action that is being protested. If notice was not provided, a copy of the protest shall be served on a managerial representative of the respondent whose responsibilities include the subject of the protest.

§ 19.33. Intervention.

(a) *Intervention as of right.* In any protest matter filed under section 27 of the act (63 P. S. § 818.27), the existing dealer who seeks to relocate a franchise or the additional dealer to whom the respondent seeks to award a franchise may intervene on behalf of the respondent upon the filing of a notice of intervention setting forth its right to intervene under this subsection. Any party intervening as of right on behalf of the respondent under this subsection shall file an answer to the protest contemporaneously with the filing of the notice of intervention or as directed in the scheduling order, whichever is later.

(b) *Intervention by permission.* Any other person seeking to intervene shall petition to intervene in accordance with 1 Pa. Code §§ 35.27—35.32 (relating to intervention).

§ 19.34. Time for adjudication.

(a) *Scheduling order.* Upon receipt from one or more parties of notice that mediation required by section 11(a) of the act (63 P. S. § 818.11(a)) was not successful, protest counsel will prepare and issue a scheduling order. The scheduling order will set forth the dates by which the answer, requests for subpoenas, prehearing statements and posthearing briefs shall be filed, as well as the date and time for the prehearing conference and the location and beginning date and time of the hearing. The dates will be determined to permit the Board to issue its adjudication in compliance with the time requirements of section 8 of the act (63 P. S. § 818.8).

(b) *Waiver.* The parties may waive the time for adjudicating a protest matter in section 8 of the act (63 P. S. § 818.8). A waiver must be in writing, specifying the time period that is to be waived, and signed on behalf of all parties joining in the waiver. Unless otherwise specified in the filing, the Board will treat the filing of any waiver as a request for a continuance through that time period and will issue an amended scheduling order accordingly.

(c) *Extension of time.* Any request for an extension of time or continuance that would delay the filing of posthearing briefs shall be accompanied by a waiver through the second monthly meeting of the Board following the date posthearing briefs are to be filed as if the

request were to be granted. The Board may grant a request for extension of time or continuance for which the protestant, or an intervenor on behalf of the protestant, does not also sign the waiver.

§ 19.35. Subsequent pleadings.

(a) *Answer.* The respondent, and any intervenor on behalf of the respondent, may not file an answer to a protest until directed to do so by a scheduling order issued by the Board. An answer must either admit or deny each numbered paragraph of the protest, in accordance with 1 Pa. Code § 35.35 (relating to answers to complaints and petitions), and may contain averments of new matter.

(b) *Reply to new matter.* The protestant, and any intervenor on behalf of the protestant, may reply within 10 days to an answer that sets forth new matter.

§ 19.36. Prehearing statements.

(a) *Filing of prehearing statement.* Each party to a protest shall file a prehearing statement in accordance with the scheduling order.

(b) *Content of prehearing statement.* A prehearing statement must contain:

(1) A concise statement of the facts that will be offered by oral or documentary evidence at the hearing and a statement of any unusual questions of evidence anticipated with respect to the proof of such facts.

(2) A statement of any questions of law anticipated with respect to the issues in the case. The questions shall be presented with a statement of authority supporting the position taken.

(3) The names and addresses of all persons who may be called as witnesses. The identification of a witness does not create any obligation to call the witness or to procure the witness's attendance at the hearing.

(4) The report and curriculum vitae of any expert whose opinion will be offered into evidence at the time of hearing. The report must include the findings and conclusions of the expert.

(5) A list of all exhibits and copies of the exhibits that a participant intends to use at the hearing.

(6) An estimate of the length of time that will be required to present the party's case in chief.

(c) *Sanctions.* Failure to file a prehearing statement as required by this section and within the time specified in the scheduling order may subject a party to sanctions, including being precluded from presenting evidence.

(d) *Supplement.* A party may supplement its prehearing statement at any time prior to the prehearing conference. A party may not present any documentary evidence or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown.

§ 19.37. Prehearing conference.

(a) *Prehearing conference.* A representative of each party to a protest shall participate in a prehearing conference under 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings) as directed by the scheduling order. Unless otherwise ordered by the Board, the prehearing conference will be telephonic and will be initiated by protest counsel.

(b) *Authority of protest counsel.* In connection with the prehearing conference, protest counsel shall have all

authority of a presiding officer under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

§ 19.38. Posthearing briefs.

(a) *Posthearing briefs.* Posthearing briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs), except that a brief may not have appended to it any copy of an exhibit or any notes of testimony.

(b) *Reply briefs.* A party may file a reply brief no later than 7 days after an opposing party's filing of a posthearing brief.

[Pa.B. Doc. No. 05-768. Filed for public inspection April 22, 2005, 9:00 a.m.]

**STATE REAL ESTATE
COMMISSION**

[49 PA. CODE CH. 35]

Biennial Renewal Fee Increases

The State Real Estate Commission (Commission) proposes to amend § 35.203 (relating to fees) to read as set forth in Annex A. The proposed rulemaking would increase the following renewal fees:

- Biennial renewal for brokers, cemetery brokers, branch offices, rental listing referral agents, brokers of record and partners or offices for a partnership association or corporation from \$84 to \$126.
- Biennial renewal for cemetery companies, associate brokers, salespersons, cemetery associate brokers, cemetery salespersons or campground membership salespersons from \$64 to \$96.
- Annual renewal of registration of promotional property from \$75 to \$113.
- Annual renewal of approval of real estate education providers from \$250 to \$375 plus an increase from \$10 to \$15 for each satellite location, course or instructor.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*. The new fees will take effect for the biennial period beginning June 1, 2006.

Statutory Authority

The proposed rulemaking is authorized under section 407 of the Real Estate Licensing and Registration Act (RELRA) (63 P. S. § 455.407). It requires the Commission to increase fees by regulation to meet or exceed projected expenditures if the revenues raised by fees, fines and civil penalties are not sufficient to meet Commission expenditures.

Background and Need for Amendment

Fees to renew real estate licenses were last increased in 1994. The Commission is required by law to support its operations from the revenue it generates from fees, fines and civil penalties. In accordance with section 407(a) of the RELRA, if the revenue raised by fees, fines and civil penalties is not sufficient to meet expenditures over a 2-year period, the Commission must increase its revenue.

The Commission raises virtually all of its operating revenue (exclusive of application and services fees) through renewal fees. The license renewal fees are the most substantial revenue-generating fee of all the fees

charged by the Commission. The Commission's current license renewal fees were established by regulation at 24 Pa.B. 2613 (May 21, 1994).

At its January 25-26, 2005, Commission meeting, the Bureau of Finance and Operations (BFO) presented a summary of the Commission's revenue and expenses for Fiscal Years (FY) 2001-2002 and 2003-2004 and projected revenue and expenses for FYs 2003-2004 through 2010-2011. The summary, presented in the following table, demonstrated that the Commission must raise fees to meet or exceed projected expenditures to comply with section 407(a) of the RELRA through FY 2004-2005. The Offices of Revenue and Budget projected a deficit of \$30,802.97 in FY 2004-2005 and continuing thereafter. The BFO recommended that the Commission raise fees 50% to meet or exceed projected expenditures in compliance with section 407(a) of the RELRA.

2001-2002 beginning balance	\$95,833.32
FY 01-02 revenue	3,130,883.12
Adjusted for prior year expenses	140,136.82
Prior year returned funds	0.00
FY 01-02 expenses	2,223,000.00
Remaining balance	863,579.62
2002-2003 beginning balance	\$863,579.62
FY 02-03 revenue	1,387,457.66
Prior year returned funds	0.00
FY 02-03 expenses	2,312,000.00
Remaining balance	(60,962.72)
2003-2004 beginning balance	\$ (60,962.72)
FY 03-04 revenue	3,559,203.99
FY 03-04 expenses	2,372,000.00
Remaining balance	1,126,241.27
2004-2005 beginning balance	\$1,126,241.27
FY 04-05 projected revenue	1,400,000.00
Prior year returned funds	697,359.12
Adjusted for prior year expenses	322,403.36
FY 04-05 projected expenses	2,932,000.00
Remaining balance	(30,802.97)
2005-2006 beginning balance	(30,802.97)
FY 05-06 projected revenue	3,500,000.00
FY 05-06 projected expenses	2,900,000.00
Remaining balance	479,197.03
2006-2007 beginning balance	479,197.03
FY 06-07 projected revenue	1,400,000.00
FY 06-07 projected expenses	3,080,000.00
Remaining balance	(1,200,802.97)
2007-2008 beginning balance	(1,200,802.97)
FY 07-08 projected revenue	3,500,000.00
FY 07-08 projected expenses	3,172,000.00
Remaining balance	(872,802.97)
2008-2009 beginning balance	(872,802.97)
FY 08-09 projected revenue	1,400,000.00
FY 08-09 projected expenses	3,267,000.00
Remaining balance	(2,739,802.97)
2009-2010 beginning balance	(2,739,802.97)
FY 09-10 projected revenue	3,500,000.00
FY 09-10 projected expenses	3,365,000.00
Remaining balance	(2,604,802.97)
2010-2011 beginning balance	(2,604,802.97)
FY 10-11 projected revenue	1,400,000.00
FY 10-11 projected expenses	3,466,000.00
Remaining balance	(4,670,802.97)

Under the current fee structure, the BFO estimates that at the close of FY 2004-2005, the Commission's

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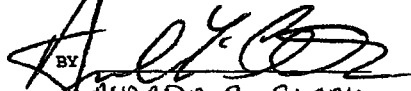
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State Board of Vehicle Manufacturers,
Dealers and Salespersons
(AGENCY)

BY: _____
(DEPUTY ATTORNEY GENERAL)

DOCUMENT/FISCAL NOTE NO. 16A-608

BY: 
ANDREW C. CLARK

DATE OF APPROVAL

DATE OF ADOPTION: _____

11.10.05
DATE OF APPROVAL

BY: 
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 §§ 19.3, 19.31-19.38
Protest Proceedings

The State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) amends § 19.3 (relating to applicability of general rules) and adds §§ 19.31-19.38 (relating to protest proceedings) to read as set forth in Annex A.

Description and Need for Rulemaking

The rulemaking adds §§ 19.31-19.38 to set forth procedural requirements for litigants to follow in vehicle protest matters before the Board. These procedural requirements supplement 1 Pa. Code Part II (relating to General Rules of Administrative Practice and Procedure) (GRAPP).

Summary of Comments and Responses to Proposed Rulemaking

The Board published notice of proposed rulemaking at 35 Pa.B. 2408 (April 23, 2005) with a 30-day public comment period. The Board received no comments from any member 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.

The HPLC first noted that § 19.3 states that the provisions of §§ 19.31-19.38 (relating to applicability of general rules) supplement the GRAPP. The HPLC suggested that the Board revise § 19.3 to make clear that the provisions of §§ 19.31-38 apply solely to protest proceedings and not to disciplinary matters before the Board. The Board revised the rulemaking accordingly. HPLC also “ask[ed] the Board to ensure that the proposed procedural rules comport with the requirements of the Due Process Clause of the U.S. Constitution and the Pennsylvania Constitution, and that the right to be heard and the right to receive notice be preserved in the proposed rules.” Although the Board does not believe that anything in this rulemaking infringes upon the due process rights of any litigant, the Board will endeavor to assure that application of the provisions of this rulemaking, together with the provisions of the Board of Vehicles Act (63 P.S. § 818.1-818.37) and the GRAPP, does not result in any denial of due process.

IRRC commented that the term “papers” in § 19.31 (relating to filing of papers) lacks clarity and recommended that the Board replace it with the term “documents.” The Board revised its rulemaking accordingly.

IRRC also commented on § 19.36(c) (relating to prehearing statements), which provides that the failure to file a prehearing statement as required may subject a party to sanctions, including being precluded from presenting evidence. IRRC questioned under what circumstances the Board would impose sanctions and what other sanctions could be imposed. Because the Board has no authority to impose monetary sanctions in protest proceedings, it would be limited to sanctioning a litigant by precluding the litigant from presenting evidence or otherwise contesting issues. The Board anticipates that such sanctions would be imposed when, due to its failure to timely file an adequate prehearing statement, the litigant has unfairly precluded an opponent from preparing to present, challenge or oppose evidence on specified issues.

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(a)(9), 8, 11, 13 and 27 of the Board of Vehicles Act (act) (63 P.S. §§ 818.4(a)(9), 818.8, 818.11, 818.13 and 818.27).

Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on April 23, 2005, the Board submitted a copy of the notice of proposed rulemaking, published at 35 Pa.B. 2408, to IRRC and the chairpersons of the HPLC and the 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 _____, 2005 the final-form rulemaking was approved by the HPLC. On _____, 2006, the final-form rulemaking was deemed approved by SCP/PLC. Under Section 5.1(e) of the Regulatory Review Act, IRRC met on _____, 200____, and approved the final-form rulemaking.

Additional Information

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

Findings

The Board finds that:

- (1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of

July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) 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) This final-form rulemaking is necessary and appropriate for the administration of the act.
- (4) This final-form rulemaking does not enlarge the scope of proposed rulemaking published at 35 Pa.B. 2408.

Order

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

- (a) The regulations of the Board at 49 Pa. Code Chapter 19 are amended by amending § 19.3 and adding §§ 19.31-19.38 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., Chairperson
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

* * *

§ 19.3. Applicability of general rules.

Under 1 Pa. Code § 31.1 (relating to scope of part), 1 Pa. Code Part II (relating to general rules of administrative practice and procedure) (general rules), is applicable to the activities of and proceedings before the Board. Sections 19.31-19.38 (relating to protest proceedings) supplement the general rules AND APPLY SOLELY TO PROCEEDINGS UNDER SECTIONS 8(D), 13 AND 27 OF THE ACT (63 P.S. §§ 818.2(D), 818.13 AND 818.27).

* * *

PROTEST PROCEEDINGS

§19.31. Filing of ~~papers~~ DOCUMENTS.

(a) Place of filing. Every pleading and other ~~paper~~ DOCUMENT in a protest matter shall be filed with the prothonotary for the Department of State at One Penn Center, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649.

(b) Copies. An original and one copy of each ~~paper~~ DOCUMENT shall be filed with the prothonotary. A copy of each ~~paper~~ DOCUMENT shall be served on each party to the protest. An

additional copy of each ~~paper~~ DOCUMENT shall be served on the Board's counsel for protest matters (protest counsel) at One Penn Center, 2601 North Third Street, P.O. Box 2649, Harrisburg, PA 17105-2649.

§19.32. Initiation of a protest.

(a) *Protest petition.* The protest must be in petition form and set forth in numbered paragraphs the material facts sufficient to justify relief to the protestant, in accordance with 1 Pa. Code § 35.17 (relating to petitions generally).

(1) The protest shall have appended to it a copy of any demand for mediation required by section 11(a) of the act (63 P.S. §818.11(a)).

(2) A protest filed under section 8(d) of the act (63 P.S. § 818.8(d)) shall have appended to it a copy of any notice of the action that is being protested.

(3) A protest filed under section 13 of the act (63 P.S. § 818.13) shall have appended to it a copy of any notice of intent to terminate a franchise.

(4) A protest filed under section 27 of the act (63 P.S. § 818.27) shall have appended to it a copy of any notice of establishment or relocation of a franchise.

(b) *Service of the protest.* A copy of the protest shall be served on the representative of the manufacturer or distributor (respondent) who provided any notice, as set forth in subsection (a), of the action that is being protested. If notice was not provided, a copy of the protest shall be served on a managerial representative of the respondent whose responsibilities include the subject of the protest.

§19.33. Intervention.

(a) *Intervention as of right.* In any protest matter filed under section 27 of the act (63 P.S. § 818.27),

the existing dealer who seeks to relocate a franchise or the additional dealer to whom the respondent seeks to award a franchise may intervene on behalf of the respondent upon the filing of a notice of intervention setting forth its right to intervene under this subsection. Any party intervening as of right on behalf of the respondent under this subsection shall file an answer to the protest contemporaneously with the filing of the notice of intervention or as directed in the scheduling order, whichever is later.

(b) *Intervention by permission.* Any other person seeking to intervene shall petition to intervene in accordance with 1 Pa. Code §§ 35.27-35.32 (relating to intervention).

§19.34. Time for adjudication.

(a) *Scheduling order.* Upon receipt from one or more parties of notice that mediation required by section 11(a) of the act (63 P.S. § 818.11(a)) was not successful, protest counsel will prepare and issue a scheduling order. The scheduling order will set forth the dates by which the answer, requests for subpoenas, prehearing statements and posthearing briefs shall be filed, as well as the date and time for the prehearing conference and the location and beginning date and time of the hearing. The dates will be determined to permit the Board to issue its adjudication in compliance with the time requirements of section 8 of the act (63 P.S. § 818.8).

(b) *Waiver.* The parties may waive the time for adjudicating a protest matter in section 8 of the act (63 P.S. § 818.8). A waiver must be in writing, specifying the time period that is to be waived, and signed on behalf of all parties joining in the waiver. Unless otherwise specified in the filing, the Board will treat the filing of any waiver as a request for a continuance through that time period and will issue an amended scheduling order accordingly.

(c) *Extension of time.* Any request for an extension of time or continuance that would delay the

filing of posthearing briefs shall be accompanied by a waiver through the second monthly meeting of the Board following the date posthearing briefs are to be filed as if the request were to be granted. The Board may grant a request for extension of time or continuance for which the protestant, or an intervenor on behalf of the protestant, does not also sign the waiver.

§19.35. Subsequent pleadings.

(a) Answer. The respondent, and any intervenor on behalf of the respondent, may not file an answer to a protest until directed to do so by a scheduling order issued by the Board. An answer must either admit or deny each numbered paragraph of the protest, in accordance with 1 Pa. Code § 35.35 (relating to answers to complaints and petitions), and may contain averments of new matter.

(b) Reply to new matter. The protestant, and any intervenor on behalf of the protestant, may reply within 10 days to an answer that sets forth new matter.

§19.36. Prehearing statements.

(a) Filing of prehearing statement. Each party to a protest shall file a prehearing statement in accordance with the scheduling order.

(b) Content of prehearing statement. A prehearing statement must contain:

(1) A concise statement of the facts that will be offered by oral or documentary evidence at the hearing and a statement of any unusual questions of evidence anticipated with respect to the proof of such facts.

(2) A statement of any questions of law anticipated with respect to the issues in the case. The questions shall be presented with a statement of authority supporting the position taken.

(3) The names and addresses of all persons who may be called as witnesses. The identification of a witness does not create any obligation to call the witness or to procure the witness's

attendance at the hearing.

(4) The report and curriculum vitae of any expert whose opinion will be offered into evidence at the time of hearing. The report must include the findings and conclusions of the expert.

(5) A list of all exhibits and copies of the exhibits that a participant intends to use at the hearing.

(6) An estimate of the length of time that will be required to present the party's case in chief.

(c) Sanctions. Failure to file a prehearing statement as required by this section and within the time specified in the scheduling order may subject a party to sanctions, including being precluded from presenting evidence.

(d) Supplement. A party may supplement its prehearing statement at any time prior to the prehearing conference. A party may not present any documentary evidence or the testimony of any witness not listed in its prehearing statement, as supplemented, except upon good cause shown.

§19.37. Prehearing conference.

(a) Prehearing conference. A representative of each party to a protest shall participate in a prehearing conference under 1 Pa. Code § 35.111 (relating to conferences to adjust, settle or expedite proceedings) as directed by the scheduling order. Unless otherwise ordered by the Board, the prehearing conference will be telephonic and will be initiated by protest counsel.

(b) Authority of protest counsel. In connection with the prehearing conference, protest counsel shall have all authority of a presiding officer under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

§19.38. Posthearing briefs.

(a) Posthearing briefs. Posthearing briefs must conform to 1 Pa. Code § 35.192 (relating to content and form of briefs), except that a brief may not have appended to it any copy of an exhibit or any

notes of testimony.

(b) Reply briefs. A party may file a reply brief no later than 7 days after an opposing party's filing of a posthearing brief.



**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**

November 28, 2005

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

Re: Final Regulation
State Board of Vehicle Manufacturers, Dealers and Salespersons
16A-608 Protest Proceedings

Dear Chairman McGinley:

Enclosed is a copy of a final rulemaking package of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to protest proceedings.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Galbreath".

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

EKG/TAB:klh
Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Albert H. Masland, 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 Blackburn, Counsel
State Board of Vehicle Manufacturers, Dealers and Salespersons
State Board of Vehicle Manufacturers, Dealers and Salespersons

FROM

(MON) NOV 28 2005 12:51/ST. 12:50/No. 6880075357 P 5

There were no commentators on rulemaking 16A-608 of the State Board of Vehicle Manufacturers, Dealers and Salespersons pertaining to protest proceedings.

RECEIVED
2005 NOV 28 PM 12:55
LABORATORY
REVIEW COMMISSION

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

I.D. NUMBER: 16A-608

SUBJECT: State Board of Vehicle Manufacturers, Dealers & Salespersons: Protest Proceedings

AGENCY: DEPARTMENT OF STATE

RECEIVED

NOV 28 2005 2:44
INDEPENDENT REGULATORY
REVIEW COMMISSION

TYPE OF REGULATION

Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions b. Without Revisions

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
11/28/05	<i>Nancy Baubert</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE

11/28/05	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
----------	--------------------	--

4/28/05	<i>M. Helms</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
---------	-----------------	--

ATTORNEY GENERAL (for Final Omitted only)

LEGISLATIVE REFERENCE BUREAU (for Proposed only)