

Regulatory Analysis Form

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INDUSTRIAL REGULATORY
REVIEW COMMISSION

(1) Agency

Department of State, Bureau of Professional and Occupational
Affairs, State Bd. of Vehicle Mfrs., 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 §§ 19.31-19.38

(5) Agency Contacts & Telephone Numbers

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

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

(6) Type of Rulemaking (check one)

Proposed Rulemaking
 Final Order Adopting Regulation
 Policy Statement

(7) Is a 120-Day Emergency Certification
Attached?

No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

This proposed rulemaking would set forth procedures to be followed in litigating vehicle protest matters before the Board. These procedures will 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), 7, 8, 13 and 27 of the Board of Vehicles Act (63 P.S. §§ 818.4(a), 818.7, 818.8, 818.13 and 818.27).

(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.

Regulatory Analysis Form

(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 non-regulation.

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 proposed regulation.

(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.

Regulatory Analysis Form

(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.

(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 proposed 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 small savings resulting from the increased clarity of procedural requirements.

Regulatory Analysis Form

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

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

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

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

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY	FY+1	FY+2	FY+3	FY+4	FY+5
SAVINGS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Savings						
COSTS:	N/A	N/A	N/A	N/A	N/A	N/A
Regulated Community						
Local Government						
State Government						
Total Costs						
REVENUE	N/A	N/A	N/A	N/A	N/A	N/A
LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

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

Not applicable.

Regulatory Analysis Form

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

Program	FY-3 (FY 01-02)	FY-2 (FY 02-03)	FY-1 (FY 03-04)	Current FY (FY 04-05)
Pa. State Board of Vehicle Mfrs., Dealers and Salespersons	\$1,364,000	\$1,437,000	\$1,587,000	\$1,756,000

(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 would 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 proposed rulemaking. This requires an expenditure of effort by the Board's protest counsel and increases the likelihood of inconsistency between 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.

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

No alternative regulatory schemes were considered, because no other regulatory schemes would effectuate the Board of Vehicles Act.

Regulatory Analysis Form

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

The proposed 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. More information can be found on the Board's web-site (<http://www.dos.state.pa.us/vehicle>), or by calling the Board office at (717) 783-1697.

Regulatory Analysis Form

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

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.

(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 rulemaking will be effective upon publication in final form in the Pennsylvania Bulletin.

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

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

CDL-1

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU
(Pursuant to Commonwealth Documents Law)

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LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

2471

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.

BY: *Amy M. Elliott*
(DEPUTY ATTORNEY GENERAL)

State Board of Vehicle Manufacturers,
Dealers and Salespersons

(AGENCY)

BY: *[Signature]*

MAR 16 2005

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-608

2.24.05

DATE OF APPROVAL
EXECUTIVE
(Deputy General Counsel
(~~Chief Counsel,~~
Independent Agency
(~~Strike inapplicable title~~))

DATE OF ADOPTION:

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

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

TITLE: Chairperson
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

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

PROPOSED RULEMAKING

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

49 Pa. Code §§ 19.31-19.38
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 amendments will be effective upon publication of the final-form regulation in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are 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 (63 P.S. § 818.13), 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 (63 P.S. § 818.27), or any alleged violation of the act by the manufacturer/distributor under section 8(d) of the act (63 P.S. § 818.8(d)). Section 8(b) of the act (63 P.S. § 818.8(b)) requires the Board to follow the General Rules of Administrative Practice and Procedure (GRAPP) (1 Pa. Code §§ 35.1-35.251) in conducting hearings, and existing § 19.3 (relating to applicability of general rules) 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 those procedures in each protest matter that is filed with the Board. The adoption of regulations relating to 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 (63 P.S. § 818.8(a)), all papers are filed with the Board's protest counsel. By contrast, all papers in all other matter 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, in order 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 the 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 (63 P.S. § 818.11(a)(3)) 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 (1 Pa. Code §§ 35.27-35.32) (relating to intervention).

Section 11(a) of the act (63 P.S. § 818.11(a)) 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 in order 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 such that it will be able to issue its adjudication within the time limitations of section 8 of the act (63 P.S. § 818.8). 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 any intervenor on behalf of the respondent, when to file an answer. The protestant, and any 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 pre-hearing conference and require the parties to file pre-hearing statements. Proposed § 19.36 (relating to pre-hearing statements) would set forth the requirements for pre-hearing 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 pre-hearing statement any time prior to the pre-hearing conference, but may not present any documentary exhibit or the testimony of any witness not listed in its pre-hearing statement, as supplemented, except upon good cause shown. Additionally, a party that failed to

timely file a pre-hearing 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 pre-hearing statement.

Proposed § 19.37 (relating to pre-hearing conference) would follow the current practice of conducting the pre-hearing conference by telephone initiated by protest counsel. Additionally, because a pre-hearing 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 pre-hearing conference under 1 Pa. Code § 35.114 (relating to authority of presiding officer at conference).

Finally, proposed § 19.38 (relating to post-hearing briefs) would require post-hearing briefs to conform to the requirements of the GRAPP (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 post-hearing briefs from including copies of the transcript or exhibits. Consistent with the GRAPP (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 post-hearing briefs, and § 19.38 would permit parties to file a reply brief within 7 days of the filing of an opposing party's post-hearing brief.

Compliance with Executive Order 1996-1

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, as required under the directives of Executive Order 1996-1 (February 6, 1996). In addition, the Board considered the impact the regulation would have on the regulated community and on public health, safety and welfare. The Board finds that the proposed amendment addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments 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 comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall 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*. Please reference No. 16A-608 (protest proceedings), when submitting comments.

Edwin K. Galbreath, Jr.
Chairperson

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), is applicable to the activities of and proceedings before the Board. The provisions of §§ 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, PA 17105-2649.

§19.32. Initiation of a protest.

(a) *Protest petition.* The protest shall be in petition form and shall 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). 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)). 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. 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. 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, pre-hearing statements and post-hearing briefs shall be filed, as well as the date and time for the pre-hearing 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 shall 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 post-hearing briefs shall be accompanied by a waiver through the second monthly meeting of the Board following the date post-hearing briefs are to be filed as if the request were to be granted. The Board may grant, in its discretion, 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 shall 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. Pre-hearing statements.

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

(b) Content of pre-hearing statement. A pre-hearing statement shall 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. All such 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 shall 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 pre-hearing 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 pre-hearing statement at any time prior to the pre-hearing conference. A party may not present any documentary evidence or the testimony of any witness not listed in its pre-hearing statement, as supplemented, except upon good cause shown.

§19.37. Pre-hearing conference.

- (a) Pre-hearing conference. A representative of each party to a protest shall participate in a pre-hearing 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 pre-hearing conference will be telephonic and will be initiated by protest counsel.
- (b) Authority of protest counsel. In connection with the pre-hearing 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. Post-hearing briefs.

- (a) Post-hearing briefs. Post-hearing briefs shall 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 post-hearing 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

March 29, 2005

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

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

Dear Chairman McGinley:

Enclosed is a copy of a proposed 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 that reads "Edwin K. Galbreath, Jr." with a stylized flourish at the end.

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

EKG/TAB/law

Enclosure

cc: Albert H. Masland, Chief Counsel
Department of State
Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel
Department of State
Herbert Abramson, Senior Counsel in Charge
Department of State
Thomas A. Blackburn, Counsel
State Board of Vehicle Manufacturers, Dealers and Salespersons
State Board of Vehicle Manufacturers, Dealers and Salespersons

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

I.D. NUMBER: 16A-608
 SUBJECT: State Board of Vehicle Manufacturers, Dealers & Salespersons - Protest Proceedings
 AGENCY: DEPARTMENT OF STATE # 2471

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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 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
3/29/05	<i>Sandra Harper</i>	HOUSE COMMITTEE ON PROFESSIONAL LICENSURE
3/29/05	<i>Mary Walmer</i>	SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE
3/29/05	<i>Paul J. Hoff</i>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
3/29/05	<i>Mary Baras</i>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)

March 21, 2005