

Comments of the Independent Regulatory Review Commission



State Board of Vehicle Manufacturers, Dealers and Salespersons Regulation #16A-6015 (IRRC #3305)

Fee Increase

August 11, 2021

We submit for your consideration the following comments on the proposed rulemaking published in the June 12, 2021 *Pennsylvania Bulletin*. Our comments are based on criteria in Section 5.2 of the Regulatory Review Act (RRA) (71 P.S. § 745.5b). Section 5.1(a) of the RRA (71 P.S. § 745.5a(a)) directs the State Board of Vehicle Manufacturers, Dealers and Salespersons (Board) to respond to all comments received from us or any other source.

1. Determining whether the regulation is in the public interest; Economic or fiscal impacts; Reasonableness; Compliance with the RRA

Section 5.2 of the RRA (71 P.S. § 745.5b) directs this Commission to determine whether a regulation is in the public interest. When making this determination, the Commission considers criteria such as economic or fiscal impact and the reasonableness. To make that determination, the Commission must analyze the text of the proposed regulation and the reasons for the new or amended language. The Commission also considers the information a promulgating agency is required to provide under Section 5 of the RRA in the Regulatory Analysis Form (RAF) (71 P.S. § 745.5(a)).

The Board's Preamble and responses to several questions on the RAF are not sufficient to allow this Commission to determine if the regulation is in the public interest. The Board is proposing to increase the application and biennial renewal fees for vehicle salespersons, manufacturer or distributor representatives, manufacturers, manufacturer or distributor branches, distributors, dealers, auctions and dealer branch lots on a graduated basis. In total, the Board is increasing sixteen fees (eight application fees and eight biennial renewal fees).

The Department of State's Bureau of Finance and Operations (BFO) annual financial report estimates the Board will experience a shortfall of approximately \$817,347.00 by the end of Fiscal Year (FY) 2021-2022. The Board proposes to increase fees, across the eight categories of licenses, for existing licensees by 25 percent and for first-time applicants by 160-200 percent over the existing fees. While we recognize the Board is statutorily required by Section 330(a) of the Board of Vehicles Act (Act) to increase fees when the revenues generated by fees, fines and civil penalties are insufficient to match expenditures over a two-year period (63 P.S. § 818.330), these increases are significant, particularly for initial applicants. Under this proposal, existing

licensees will have the benefit of an implementation schedule that spans two bienniums to plan for the increases. We ask the Board to explain how the percentage increases of fees are reasonable for existing licensees and new applicants. In addition, the Board does not explain what steps it has taken to control expenses. The Board should include this narrative in the Preamble and RAF when it submits the final-form regulation.

RAF #26 requires the promulgating agency to include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected. The Board's response to RAF #26 states that it "considered a one-time 20% increase in application and renewal fees and determined that a graduated fee increase offered the best protection for the Board against the loss of licensees resulting from the natural fluctuations in the industry."

The Board's response to RAF #26 does not discuss how the Board's proposal represents the least burdensome acceptable alternative for existing licensees and first-time applicants. When the Board submits the final version of this rulemaking, it should explain how the Board's proposal represents the least burdensome approach for the regulated community. A statement indicating that the Board selected the least burdensome alternative should be included.

In the Preamble and response to RAF #10, the Board explains it has incurred significant increases in legal, hearing examiner, enforcement and investigation expenses. In the Preamble, paragraph 2 under *Background and Purpose* the Board states that expenses for FY 2019-2020 were \$2.88 million. Expenses for FY 2021-2022 and FY 2022-2023 are estimated to be \$6.29 million. This significant increase in Board expenses is attributed to the rapid rise in the number of investigations, open cases and disciplinary matters arising from the criminal information that the Board receives from the Pennsylvania Justice Network. The Board reports that the BFO expects these increases to continue proportionately based on the data collected by the Bureau of Enforcement and Investigation. Have these investigations, open cases and sanctions resulted in a substantial increase in the fines and civil penalties the Board collects? If not, why not?

Additionally, the Board anticipates that increased revenue will be needed to fulfill its obligations under recently adopted amendments to the act. To better understand the basis and the need for the regulation, we ask the Board to address the following questions when it submits the final rulemaking:

- What factors have contributed to the rapid rise in the number of investigations, open cases and disciplinary matters?
- What is the time period over which the increase in the number of investigations, open cases and disciplinary matters has occurred?
- Why does the BFO expect these numbers to continue to increase?
- Which newly enacted amendments require increased revenue necessary for the Board to carry out its obligations?

As part of the response to RAF #28, the Board provides Fee Report Forms in support of the initial licensure fees for the eight categories of licenses. However, the Fee Report Forms, including the "Fee-Related Activities and Costs" calculation, for the eight biennial renewal fees were not included. We ask the Board to provide its costs for biennial renewal of the eight license

categories, including the “Fee Related Activities and Costs,” in support of the amount of the fees in the final regulation.

The numbers shown in RAF #16 and 17 do not match the numbers shown under the *Fiscal Impact and Paperwork Requirements* section of the Preamble. In RAF #16 and 17, the Board states that there are 41,828 license renewals and 13,252 new applications. In the referenced section of the Preamble, it reports 39,840 license renewals. The Board should review the information provided in the Preamble and RAF for consistency and make the necessary revisions when it submits the final version of this rulemaking.

The Board utilizes information from the BFO’s annual financial report that was presented November 27, 2019, which includes actual expenses and revenue from FY 2011-2012 through FY 2018-2019, as the basis for this regulatory proposal. (RAF #10, #28) In RAF #23a, the Board provides an estimated expenditure figure, rather than an actual figure, for FY 2019-2020. We ask the Board, when it submits the final rulemaking package, to provide an updated RAF and Attachments that includes the most recent fiscal data available.

2. Miscellaneous

- The Board should make certain that the titles of the fees are used consistently in the Preamble, RAF and Attachments to the final-form regulation.
- In RAF #14, the Board should verify and revise, if necessary, the dates of the Board’s meetings.
- In RAF #30, the Board meeting dates should be revised to remove any dates that are no longer remaining.