

PROPOSED RULEMAKING

FISH AND BOAT COMMISSION

[58 PA. CODE CH. 63]

Fishing Guide Operations

The Fish and Boat Commission (Commission) proposes to amend Chapter 63 (relating to general fishing regulations) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed amendments relate to the recognition of fishing guide operations.

A. Effective Date

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. Contact Person

For further information on the proposed rulemaking, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposal is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. Statutory Authority

The proposed amendments to § 63.41 (relating to recognition of charter boat and fishing guide operations) are published under the statutory authority of section 2102 of the code (relating to rules and regulations).

D. Purpose and Background

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to recognized fishing guide operations. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal.

E. Summary of Proposal

The Commission administers a program that provides for the voluntary Official Recognition of Charter Boats and Fishing Guides operating within this Commonwealth. Under existing regulations, operators pay a \$50 annual fee for which they receive an official recognition certificate and two decals. In return, they may proclaim themselves as being officially recognized by the Commission and may field dress fish caught for their customers. They also must report to the Commission the number and species of fish caught and their disposition.

The Commission is proposing several significant revisions to § 63.41 as set forth in Annex A. The major changes include:

- Changing the title of the section to "recognition of fishing guide operations." This program enables those so recognized to provide value added services for customers, such as field dressing fish, and imposes a reporting requirement on fish caught. The use of a boat when delivering these services is incidental and not germane to the primary privileges and requirements of participation.

- Including a definition of "concurrent jurisdiction waters" for the purpose of this section.

- Imposing additional requirements when boats are used in fishing guide operations, such as: (1) a Pennsylvania Boating Safety Education Certificate; and (2) registration carrying a use classification of "commercial passenger" when the boat is registered in this Commonwealth.

- Requiring additional documentation be included with applications when boats are used, depending on the number of passengers.

- Correcting a reference to Chapter 101 (relating to boating accidents) to refer to Chapter 115 (relating to boats carrying passengers for hire).

Commission staff intend to provide a copy of the proposed rulemaking to all current participants in the program.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions and will impose no new costs on the general public. The proposed rulemaking will impose new costs on the private sector in that they will require that when charter boats are used, applicants for official recognition submit a copy of a valid boat registration certificate, showing the boat use classification as "commercial passenger." The statutory biannual fee for a commercial passenger boat registration is \$50, as opposed to the biannual fee of \$30 and \$40 to register motorboats 16 feet to less than 20 feet and motorboats 20 feet or longer, respectively. Each year, the Commission receives approximately 100 applications for official recognition, nearly half of which involve charter boats. Thus, the impact on the private sector will be nominal.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-135. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart B. FISHING

CHAPTER 63. GENERAL FISHING REGULATIONS

§ 63.41. Recognition of [charter boat and] fishing guide operations.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise:

Charter boat—A boat operated as [a commercial enterprise which carries passengers for hire for the purpose of fishing] part of a fishing guide operation on the waters of this Commonwealth.

Concurrent jurisdiction waters—Those waters of this Commonwealth over which the Commonwealth and the United States Coast Guard exercise concurrent jurisdiction, including Lake Erie and the Ohio, Monongahela, Allegheny, Delaware and North Branch, Susquehanna and West Branch, Susquehanna (below Williamsport) Rivers.

Fishing guide operation—A [person who operates a] commercial enterprise [whereby he guides or leads other persons] operated for the purpose of guiding or leading persons fishing on the waters of this Commonwealth by boat or otherwise.

(b) *Voluntary official recognition.* [Registered owners of charter boats and operators of fishing guide enterprises may apply for recognition by the Commission. The application shall contain information the Executive Director may require. Applications will be subject to review by the Bureaus of Law Enforcement, Fisheries and Boating. The Executive Director, with the advice of the staff, may grant official recognition to charter boat and fishing guide operations.] The Executive Director may upon application grant official recognition of fishing guide operations. Applications for recognition shall be made on forms provided by the Commission and contain information the Executive Director may require. Denial of official recognition may be appealed in accordance with Chapter 51, Subchapter E (relating to permit procedures).

(c) [*Inspection and licensing.* Charter boats shall be licensed either as “boats carrying passengers for hire” under Chapter 101 (relating to boating accidents) or by the United States Coast Guard.] *Charter boats.* When charter boats are used, an applicant for official recognition shall submit the following evidence along with the application:

(1) A copy of a valid boat registration certificate, showing the boat use classification as “commercial passenger.”

(2) A copy of a Boating Safety Education Certificate for all operators and crew members.

(3) For charter boats carrying seven or more passengers for hire on concurrent jurisdiction waters submit the following:

(i) A copy of the operator’s license issued by the United States Coast Guard appropriate for the waters on which the boat will operate.

(ii) A copy of the valid Federal documentation certificate.

(iii) A copy of the most recent inspection report for the vessel.

(4) For charter boats carrying six or fewer passengers for hire on concurrent jurisdiction waters, a copy of the operator’s license issued by the United States Coast Guard appropriate for the waters on which the boat will operate.

(5) For charter boats carrying seven or more passengers for hire on waters other than concurrent jurisdiction waters, a certificate of inspection issued under Chapter 115 (relating to boats carrying passengers for hire).

(d) *Duration and fee.* Official recognition of [charter boats and] fishing guide operations [are] shall be valid for a calendar year and shall expire on December 31 of the year [in which they are issued] of issuance. The annual fee for official recognition is \$50.

(e) *Use of official recognition.* [Charter boat and fishing] Fishing guide operations recognized under this section may indicate that they have been “Officially Recognized by the Pennsylvania Fish and Boat Commission” in advertisements and by other means.

(f) *Compliance with regulations.* Persons who receive official recognition for [their charter boat or] fishing guide operations are responsible for ensuring that their employees, passengers and customers comply with fishing and boating regulations. The individual who submits and signs the application shall be the fishing guide or the owner/lessee/captain of the charter boat, and the individual shall be considered the individual party responsible for compliance with regulations. An application for official recognition shall include a provision whereby applicants agree that they will be responsible and are subject to prosecution for [a] any violation of this part [which occur] that occurs in connection with their operations.

(g) *Reports.* [Operators of officially-recognized charter boat and] Officially-recognized fishing guide operations shall provide periodic reports to the Commission on the number of passengers or customers, number and species of fish caught and their disposition and other matters the Executive Director may require. Reports shall be submitted on forms approved by the Commission in numbers and at intervals [the Executive Director may request] determined by the Executive Director. Not more than four nor less than one report will be required per calendar year.

(h) *Field dressing of fish.*

(1) Notwithstanding § 63.15 (relating to field dressing of fish), fish caught pursuant to officially-recognized [charter boat and] fishing guide operations may be filleted and have the head and tail removed before arrival at the place of consumption. The skin shall remain attached to the fillet for species subject to a minimum size limit [have a minimum fillet size limit equal to 75% of the minimum size limit for that species]. The minimum fillet size shall be 75% of the minimum size limit of the fish being filleted.

(2) The [operator of the charter boat or] fishing guide operation shall give the person who receives the

field dressed fish a signed, dated receipt indicating the species and number of fish on a form acceptable to the Commission. A person in possession of the field dressed fish shall carry the receipt with **[them] him** and display it upon request to an officer authorized to enforce this title until the fish have arrived at the place of consumption. It is the responsibility of the officially-recognized **[charter boat or]** fishing guide **[operator] operation** to ensure that a fish field dressed pursuant to the authority of this subsection complies with applicable season, size and creel limits.

(i) **Holder of official recognition. Official recognition for a fishing guide operation that does not involve operation of a charter boat will be issued to an individual fishing guide. Each individual fishing guide shall apply for and receive official recognition. Official recognition for charter boats will be issued to the owner/lessee/captain of the boat. Individuals employed as crew members for a charter boat may, but need not necessarily, apply for and receive individual recognition as fishing guides. The operators of charter boats and the crew members shall comply with the licensing and training requirements in subsection (c).**

(j) **Suspension or revocation of official recognition.** The Commission may suspend or revoke the official recognition of a **[charter boat or]** fishing guide **[operator] operation** for noncompliance with the terms and conditions **[with]** of this section or when the **[operator] guide operation, the individual fishing guide, charter boat owner/lessee/captain or employee or crew member of the guide operation** is convicted or acknowledges guilt of a violation of the code or this part **related to the fishing guide operation.** Suspension or revocation procedures shall comply with Chapter 51, Subchapter C (relating to suspension, denial or revocation of licenses, permits, registration or privileges).

[Pa.B. Doc. No. 02-2226. Filed for public inspection December 13, 2002, 9:00 a.m.]

[58 PA. CODE CH. 111] Boating

The Fish and Boat Commission (Commission) proposes to amend Chapter 111 (relating to special regulations counties) to read as set forth in Annex A. The Commission is publishing this proposed rulemaking under the authority of 30 Pa.C.S. (relating to the Fish and Boat Code) (code). The proposed rulemaking relates to boating.

A. *Effective Date*

The proposed rulemaking, if approved on final-form rulemaking, will go into effect upon publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the proposed rulemaking, contact Laurie E. Shepler, Assistant Counsel, P. O. Box 67000, Harrisburg, PA 17106-7000, (717) 705-7815. This proposed rulemaking is available electronically through the Commission's website (<http://www.fish.state.pa.us>).

C. *Statutory Authority*

The proposed amendments to §§ 111.32, 111.59 and 111.65 (relating to Indiana County; Tioga County; and

Westmoreland County) are published under the statutory authority of section 5124 of the code (relating to particular areas of water).

D. *Purpose and Background*

The proposed rulemaking is designed to update, modify and improve the Commission's regulations pertaining to boating. The specific purpose of the proposed rulemaking is described in more detail under the summary of proposal. The Commission's Boating Advisory Board considered the proposals and recommended that the Commission publish a notice of proposed rulemaking containing the proposed amendments.

E. *Summary of Proposal*

(1) *Sections 111.32 and 111.65.* The Commission received a letter from the U.S. Army Corps of Engineers (Corps), Pittsburgh District, dated April 22, 2002, requesting that the Conemaugh River Lake be restricted to electric and manual powered boats. The Conemaugh River Lake was created in 1953 as a part of the flood control system for the Allegheny and Ohio Rivers. The project purposes include flood control, water quality, hydropower generation and recreation. Of these purposes, only flood control has storage allocated for its operation. Other purposes are accommodated to the extent feasible. The summer pool is approximately 800 acres.

Due to historic acid mine drainage pollution, the quality of the water has been highly degraded and water recreational facilities have not been developed. During the past 10 years, agencies have observed a significant improvement in water quality to the point where water recreation is becoming a possibility and demand for shoreline fishing and hand carried boat launching is increasing.

In 1995, the Corps initiated an analysis of various proposed boating alternatives. An interagency meeting was convened to gather input from State and Federal agencies and a consensus electric/manual boat policy was reached. Because there was no significant access at that time, no action was taken to formalize this restriction beyond the Operations Management Plan. However, access is improving with two hand-carry boat launch sites having been developed by local municipalities and two more in the planning stage for development in the next 2 years. The current Corps policy for boating limits on this lake should be formalized in the Commission's regulations. Accordingly, the Commission proposes to amend these sections to read as set forth in Annex A.

(2) *Section 111.59.* The Commission received a letter from the Corps, Baltimore District, dated August 6, 2002, requesting changes to the boating regulations on Tioga, Hammond and Cowanesque Lakes. These lakes were built in the late 1970s as a part of the flood control system for the Susquehanna River. As the lakes were opened, the Commission and the Corps developed a management plan for boating. This plan was modified in the 1991 when the level of the water at Cowanesque Lake was raised. Since that time, the lakes have increased in popularity, becoming a destination for many people from the northern tiers of this Commonwealth and southern New York. After evaluating the current use of the facilities, the Corps is proposing loosening the restrictions on certain activities to expand boating opportunities.

The Corps proposes to:

- Remove the "slow no wake" regulation at Cooks Creek Cove—the area is no more than 200 feet across and is therefore regulated by the general no wake regulations.

• Remove the restriction from boating at the dam—no trespassing signs keep people off the dam structure and there is no need to restrict boats in this area.

• Eliminate the “boats keep out” restriction above the Route 49 Bridge—the original purpose of this restriction was to keep boaters away from Nelson Falls. The Route 49 Bridge provided an easy place to mark this restriction. The Corp has since been able to mark this area by other means and would like to open this area to boats.

• Eliminate the two water-skier rules—the original restriction was intended to restrict conventional skiers. The more common use today is inflatable tubes and similar devices many of which are designed for more than two people. Eliminating this rule will allow families greater freedom to use and enjoy the sport.

• Eliminate the over the transom exhaust restriction—the Corps believe there is no further need for this rule. The original concern was for noise, and the Commission has other regulations to control the production of excessive noise by boats of this type.

• Add a new “slow no wake” zone in the vicinity of two heavily used launch ramps—this area is on a narrow part of the lake and is very congested because of the launch ramp use.

The Commission has reviewed the proposed rulemaking and agrees that the changes will be beneficial to the overall use of the three lakes. Accordingly, the Commission proposes to amend this section to read as set forth in Annex A.

F. Paperwork

The proposed rulemaking will not increase paperwork and will create no new paperwork requirements.

G. Fiscal Impact

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The proposed rulemaking will impose no new costs on the private sector or the general public.

H. Public Comments

Interested persons are invited to submit written comments, objections or suggestions about the proposed rulemaking to the Executive Director, Fish and Boat Commission, P. O. Box 67000, Harrisburg, PA 17106-7000, within 30 days after publication of this notice in the *Pennsylvania Bulletin*. Comments submitted by facsimile will not be accepted.

Comments also may be submitted electronically at ra-pfbcregs@state.pa.us. A subject heading of the proposal and a return name and address must be included in each transmission. In addition, all electronic comments must be contained in the text of the transmission, not in an attachment. If an acknowledgment of electronic comments is not received by the sender within 2 working days, the comments should be retransmitted to ensure receipt.

PETER A. COLANGELO,
Executive Director

Fiscal Note: 48A-137. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 58. RECREATION

PART II. FISH AND BOAT COMMISSION

Subpart C. BOATING

CHAPTER 111. SPECIAL REGULATIONS
COUNTIES

§ 111.32. Indiana County.

* * * * *

(c) *Conemaugh River Lake.*

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

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

§ 111.59. Tioga County.

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(b) *Cowanesque Lake.*

[(1)] Boats are limited to slow, minimum height swell speed in the following areas:

[(i)] (1) * * *

[(ii)] (2) * * *

[(iii) Cooks Creek Cove] (3) Between the buoy lines across the lake in the vicinity of the East and West Boat Launch areas.

[(iv)] (4) From the [Day Use Beach] buoy line west of the South Shore Day Use Area upstream to the headwaters of the lake.

[(2) Boats are prohibited in the following areas:

(i) On a line parallel to the dam approximately 25 yards from the shoreline.

(ii) From the Route 49 Bridge at Nelson in the headwaters at Nelson Falls.

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

(c) *Hammond Lake.*

[(1)] Boats are limited to slow, minimum height swell speed from a **buoy** line across the lake in the **[approximate]** vicinity of **[the Lakeside Pavilion at]** Ives Run **[Recreation Area]** to the extreme backwaters of the lake.

[(2) No more than one waterskier may be towed behind a boat.

(3) It is unlawful to operate boats equipped with over the transom or straight stack type exhaust, wet or dry.]

* * * * *

(f) *Tioga Lake.*

[(1)] Boats are limited to slow, minimum height swell speed in the following areas:

[(i)] (1) * * *

[(ii)] (2) * * *

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

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§ 111.65. Westmoreland County.

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(c) *Conemaugh River Lake.*

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

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

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

GAME COMMISSION

[58 PA. CODE CH. 137]

Feeding of Certain Wildlife Prohibited

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

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

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

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

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

1. *Introduction*

The Commission is proposing to add § 137.33.

2. *Purpose and Authority*

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

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

3. *Regulatory Requirements*

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

4. *Persons Affected*

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

5. *Cost and Paperwork Requirements*

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

6. *Effective Date*

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

7. *Contact Person*

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

VERNON R. ROSS,
Executive Director

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

Annex A

TITLE 58. RECREATION

PART III. GAME COMMISSION

CHAPTER 137. WILDLIFE

§ 137.33. Feeding of certain wildlife prohibited.

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

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

STATE BOARD OF VEHICLE MANUFACTURERS, DEALERS AND SALESPERSONS

[49 PA. CODE CH. 19]

Consignment Sales

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

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

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

Effective Date

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

Statutory Authority

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

Background and Need for the Proposed Rulemaking

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

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

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

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

Description of Proposed Rulemaking

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

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

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

The Board sent this proposed rulemaking to dealer organizations as required under the directives of Executive Order 1996-1. In addition, the Board considered the impact the proposed rulemaking would have on the regulated community and on public safety and welfare. The Board finds that the proposed rulemaking addresses a compelling public interest as described in this Preamble and otherwise complies with Executive Order 1996-1.

Fiscal Impact and Paperwork Requirements

The proposed rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions.

The proposed rulemaking will impose no additional paperwork requirements upon the Commonwealth or political subdivisions. Dealers will be required to comply with additional paperwork requests of § 19.18a.

Sunset Date

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

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on November 14, 2002, the Board submitted a copy of this proposed rulemaking to IRRC and the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. In addition to submitting the proposed rulemaking, the Board has provided IRRC and the Committees with a copy of a detailed Regulatory Analysis Form prepared by the Board in compliance with Executive Order 1996-1. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed rulemaking, it will notify the Board within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria that have not been met by the portion of the proposed rulemaking to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Teresa Woodall, State Board of Vehicle Dealers, Manufacturers and Salespersons, P. O. Box 2649, Harrisburg, PA 17105, www.dos.state.pa.us within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

EDWARD J. CERNIC, Jr.,
Chairperson

Fiscal Note: 16A-607. No fiscal impact; (8) recommends adoption.

Annex A

**TITLE 49. PROFESSIONAL AND
VOCATIONAL STANDARDS
PART I. DEPARTMENT OF STATE
Subpart A. PROFESSIONAL AND
OCCUPATIONAL AFFAIRS
CHAPTER 19. STATE BOARD OF VEHICLE
MANUFACTURERS, DEALERS AND
SALESPERSONS
DEALERSHIP LICENSE**

§ 19.18a. Consignment sales.

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

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

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

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

(i) The name and signature of the consignor.

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

(iii) The length of the consignment period.

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

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

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

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

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

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

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

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

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

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

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