

RULE

Office of the Governor Motor Vehicle Commission

Recreational Product Industry
(LAC 46:V.113, 115, 1801, 1802, 1803, 1804,
1805, 1806, 1901, 1903 and 1905)

EDITOR'S NOTE: The Sections below have been moved from Subpart 2 to Subpart 1. These Sections have been recodified are being repromulgated pursuant to Act 403 of the 2009 Regular Legislative Session.

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS Part V. Automotive Industry Subpart 1. Motor Vehicle Commission

Chapter 1. General Requirements

§113. Hearings on Area of Responsibility Disputes

NOTE: This Section has been moved from LAC 46:V.4711.

A. Before a dealer can file a notice of intent under R.S. 32:815 or 817 to establish itself as a new dealer, it must provide to the commission written approval from the manufacturer and that the manufacturer has notified its existing dealer that it intends to establish a new dealer.

B. When the commission receives a timely objection in accordance with either R.S. 32:815 or 817 the commission shall notice the dispute for hearing within 30 days following receipt of the objection; however, the hearing shall not be set any sooner than 10 days prior to the hearing date.

C. The notice of hearing shall apprise each party that there are no violations under consideration and that the commission's duties are only to allow the parties to present their dispute and to make an informed decision on the issues presented.

D. The manufacturer and/or proposed new dealer shall be responsible for presenting evidence showing whether the community can support an additional dealer, whether any change in the area of responsibility would increase competition or be in the public interest, and whether the existing dealer is providing adequate representation.

E. The existing dealer shall be responsible for presenting evidence showing the impact on their business.

F. No summary proceeding shall be allowed with regard to any final orders or judgments of the commission with regard to area of responsibility disputes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009).

§115. Hearings on a Repurchase Demands

NOTE: This Section has been moved from LAC 46:V.4713.

A. Prior to noticing a repurchase demand for hearing, pursuant to R.S. 32:816, 818, 821 or 822, the hearing officer will determine the following:

1. that the dealer has on file with the commission a franchise agreement, service agreement or letter of authorization from the manufacturer;

2. that the dealer has made a request for repurchase by certified or registered mail within 30 days following the date it ceased to do business or ceased to carry that particular line. The dealer may combine this request with his final inventory;

3. that the dealer has forwarded his final inventory to the manufacturer by certified or registered mail;

4. that a field investigator has verified the existence of the product and has inspected the product.

B. The notice of hearing on the repurchase demand shall be served on all parties, and shall be served, in the case of all recreational products with the exception of marine products, at least 15 days prior to the hearing.

C. The notice of hearing on the repurchase demand for marine products shall be served on all parties at least 21 days prior to the hearing and shall notify the manufacturer of its option to appoint an independent marine surveyor. The marine manufacturer must identify the independent surveyor to the commission at least 10 days prior to the hearing and must furnish the surveyor's report to the commission at least five days prior to the hearing; otherwise, the report and the testimony of the surveyor may be excluded from the hearing at the discretion of the hearing chairman. The commission shall timely forward the identity and report of the independent marine surveyor to the dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:785.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:1223 (July 2006), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009).

Chapter 18. Recreational Products Trade Show; Definitions, License Fees and Applications; Violations and Regulation

§1801. Definitions

NOTE: This Section has been moved from LAC 46:V.3001.

Display Permit—a temporary license issued to a nonresident exhibitor, to display recreational products at a trade show or exposition. The permit issued shall be for the duration of the trade show only and shall not exceed 14 days.

Local Trade Show—a trade show in which the promoter's initial invitation is limited to Louisiana-licensed dealers within a 30-mile radius around the show location.

Nonresident Exhibitor—a nonresident dealer or manufacturer of recreational products who holds a current dealer or manufacturer license in another state and whose Louisiana business is limited to participation in trade shows or expositions in this state.

Promoter—any person, firm, association, corporation, partnership, limited liability company or trust, who alone or with others assumes the financial responsibility of a recreational products trade show or exposition in which recreational products are displayed by licensed dealers, manufacturers or distributors, or exhibitors as provided herein.

Recreational Products—any new or used recreational vehicle, motorcycle, ATV, or marine product.

Regional Trade Show—a trade show in which the promoter's initial invitation is only limited to Louisiana-licensed dealers and whose subsequent invitations may include any nonresident exhibitor who will display and show any product not displayed or shown by a Louisiana-licensed dealer.

Trade Show—a controlled event in which a promoter charges or barter for booth space and/or charges for spectator entrance in which three or more recreational products dealers exhibit vehicles.

Trade Show Permit—a temporary license issued to a promoter to perform a recreational products trade show.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32: 783(F)(7).

HISTORICAL NOTE: Promulgated by the office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:435 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1525 (August 2009).

§1802. License Fees and Applications

NOTE: This Section has been moved from LAC 46:V.3002.

A. Promoters of recreational products trade shows shall be required to obtain a license from the commission and its request for license shall consist of the following:

1. the application for license shall be on forms prescribed by the commission and shall require such information as the commission deems necessary to enable it to determine the qualifications and eligibility of the applicant;
2. a license fee of \$100;
3. a promoter's license shall be for one calendar year and shall expire on December 31.

B. A promoter shall also be required to obtain a trade show permit from the commission and its request for a permit shall consist of:

1. the identity of at least three participants, the start date, ending date, location of the proposed trade show or exposition, and the type of vehicles to be promoted at the trade show;
2. an official designation as to whether the trade show is a regional trade show, with proof supporting that the show facilities have adequate space to host the type of show being permitted;
3. a fee of \$500 per regional trade show;
4. a fee of \$200 per local trade show.

C. A nonresident exhibitor shall be required to provide the following documents to the commission to obtain a display permit to display recreational products in a trade show:

1. an oath or affirmation that the nonresident exhibitor has complied with all registration requirements of the state in which he conducts his business including any requirements pertaining to posting of bond and demonstration of fiscal responsibility;
2. a notarized copy of the dealer's or manufacturer's current license issued in the state in which he conducts his business;
3. the name, site, and dates of the show or exposition for which a nonresident exhibitor's permit is sought and the name and address of the promoter of that show or exposition;
4. such other pertinent information consistent with the safeguarding of the public interest and public welfare;
5. an application fee of \$100.

D. A Louisiana-licensed recreational products dealer who participates in a recreational products show or exposition shall not be deemed to have an additional place of business at that show or exposition and shall not be charged any permit fees.

E. All applications to the commission for display permits received within five days of that start of the trade show or exposition shall be charged a \$50 late processing fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009).

§1803. Order of Preference and Priority

NOTE: This Section has been moved from LAC 46:V.3003.

A. The following order of preference shall be observed by the promoter in arranging a regional trade show.

1. The promoter shall first contact all Louisiana-licensed dealers who sell the type of vehicles being promoted, and those Louisiana-licensed dealers who accepted the invitation to attend the show shall exclude all nonresident exhibitors from displaying or showing the particular line of recreational products that they are displaying at the show or exposition. The acceptance of an invitation by a Louisiana-licensed dealer shall be expressed as a signed contract for space and accompanied by any deposits required by the show promoter and shall be performed within a reasonable time following the invitation as required by the promoter.

2. The promoter may then invite any nonresident exhibitor to attend the show or exposition to display and show any product not displayed or shown by a Louisiana-licensed dealer.

B. The following order of preference shall be observed by the promoter in arranging a local trade show.

1. The promoter shall first contact all Louisiana-licensed dealers who sell the type of vehicles being promoted, starting within a 30-mile radius of the proposed show or exposition, and those Louisiana-licensed dealers within a 30-mile radius to the show who accepted the invitation to attend the show shall exclude all other dealers from

outside of 30 miles from displaying or showing the particular line of recreational products that they are displaying at the show or exposition.

2. The promoter may invite but shall accept any requests from a Louisiana-licensed dealer, who is not excluded by the provision above and is beyond 30 miles to attend a show or exposition, and those Louisiana-licensed dealers who attend the show shall exclude all nonresident exhibitors from displaying or showing the particular line of recreational products that they are displaying at the show or exposition.

3. The promoter may then invite any nonresident exhibitor to attend the show or exposition to display and show any product not displayed or shown by a Louisiana-licensed dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 783 (F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009).

§1804. Violations

NOTE: This Section has been moved from LAC 46:V.3004.

A. It shall be unlawful and shall constitute a violation of this Chapter:

1. for a recreational products dealer or a non resident exhibitor to display or show recreational products at any trade show except as allowed in §1803 above;

2. for a nonresident exhibitor to display or show recreational products at a trade show without first obtaining a display permit;

3. for a promoter:

a. to knowingly allow any dealer or nonresident exhibitor to display recreational products in any manner other than what is allowed in §1803 above;

b. to knowingly allow any dealer or nonresident exhibitor of recreational vehicles to display or show any line of recreational vehicles offered by any licensed recreational vehicle dealer whose franchise area includes the location of the trade show, unless the recreational vehicle dealer whose franchise territory includes the location of the trade show consents to the display;

c. to knowingly allow a nonresident exhibitor to display or show recreational products without having a display permit;

d. to fail to keep all records of attending dealers and sufficient and reasonable proof of the required invitations to dealers and proof that dealers who have declined to attend a trade show or exposition for a period of three years;

e. to allow a manufacturer or distributor, other than a nonresident exhibitor, to exhibit vehicles in any manner other than through a licensed dealer;

f. to fail to provide to the commission 10 days prior to the trade show a complete list of all dealers participating in the trade show;

4. for a licensed recreational products dealer or nonresident exhibitor to complete a sales transaction (by accepting the purchase funds, completing the paperwork and/or delivering product) for any recreational products at a trade show. Said restriction shall not apply or extend to sales and price negotiation, accepting deposits, setting closing dates, or completing a buyer's order;

5. for a licensed recreational vehicle dealer to knowingly display at a trade show the same line of recreational vehicles as displayed by a licensed recreational vehicle dealer whose franchise territory includes the location of the trade show, unless the recreational vehicle dealer whose franchise territory includes the location of the trade show consents to the display;

6. for a licensed recreational vehicle manufacturer or distributor to exhibit recreational vehicles at a trade show in any manner other than through a licensed dealer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:436 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1526 (August 2009).

§1805. Miscellaneous Provisions; Enforcement

NOTE: This Section has been moved from LAC 46:V.3005.

A. If a recreational vehicle trade show is being held in a location where the same line makes or models of recreational vehicles does not have a dealer with a franchise territory, it shall be the manufacturer's responsibility to determine which licensed dealer(s) will represent that same line makes or models at the trade show.

B. The commission shall have authority to issue any orders necessary to enforce the provisions of this Section, including the entry of a cease and desist order which may be enforced in any proper venue including the parish of East Baton Rouge.

C. In addition to the enforcement of any necessary orders, the commission may suspend or revoke any license and/or it may impose a penalty in accordance with R.S. 32:788. In such cases, the affected licensee will be given all notices, opportunity to be heard and rights to appeal as conferred in R.S. 32:785.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783(F)(7).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009).

§1806. Off-Site Displays—Marine Products

NOTE: This Section has been moved from LAC 46:V.3006.

A. The commission must approve all off-site displays of new marine products. A request for an off-site display must be received and approved by the commission seven days prior to the commencement of the display.

B. The location of any off-site display must be within the dealer's defined area of responsibility or within his manufacturer's contracted agreement for the make and mode to be displayed.

C. The licensee participating in an off-site display of his product is not required to contract all dealers within a 50 mile radius.

D. Each off-site display of marine products is limited to:

1. one marine dealer;

2. nine days and four displays a year. An off-site display of marine products will be permitted at the same location every six months.

E. The number of vehicles at any off-site display of marine products will be left to the discretion of the commission, with a maximum of 20 vehicles per licensee, per display.

F. The presence of any sales personnel, business cards, brochures, pricing sheets and other points of sales devices will be allowed to answer consumer questions. However, marine products cannot be delivered from that off-site display location.

G. Any licensee participating in an off-site display without the approval of the commission will be in violation of R.S. 32:814(A)(7)(d) and will result in a minimum penalty of \$500 per vehicle, per display for the first offense.

H. A licensee must furnish a liability insurance binder to the owner of the off-site property. The same liability binder with the off-site property and owner listed must be furnished to the commission with the Off-Site Display Form.

I. This policy is separate from the rules and regulations pertaining to trade shows.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:783.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 34:437 (March 2008), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1527 (August 2009).

Chapter 19. Marine Product Manufacturer/Distributor

§1901. Uniform Procedures to Designate the Territory Assigned to a Marine Dealer

NOTE: This Section has been moved from LAC 46:V.4803.

A. On any occasion in which the marine product manufacturer/distributor has designated, an area of responsibility smaller in size to that provided for in R.S. 32:1252(4)(b) the marine product manufacturer and/or distributor must furnish with the designation the uniform procedure to establish the community or territory that is assigned to a marine dealer. If the manufacturer/distributor fails to furnish a uniform procedure with its designation, the commission shall reject the designation and shall so notify the manufacturer/distributor of the rejection by certified mail. With the notice of rejection, the commission shall provide the manufacturer/distributor the opportunity to appeal the rejection to the commission in a hearing at the commission's monthly meeting.

B. Where the marine product manufacturer/distributor has provided the uniform procedure with its designation, the commission shall review the designation and advise the manufacturer/distributor within 10 days following receipt as to whether the designation has been accepted or rejected. If the designation has been rejected, the manufacturer/distributor shall be so notified by certified mail of the rejection and informed of the opportunity to appeal the rejection in a hearing at the commission's monthly meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 30:2482 (November 2004), amended LR 33:1638

(August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1528 (August 2009).

§1903. Procedure for Appointing Independent Marine Surveyor

NOTE: This Section has been moved from LAC 46:V.4901.

A. When a marine product manufacturer/distributor elects to appoint an Independent Marine Surveyor to inspect the marine dealer's inventory to determine whether the product has been altered or damaged to the prejudice of the manufacturer/distributor, the manufacturer/distributor shall notify the commission of the identity of the Independent Marine Surveyor within 15 days prior to the hearing before the commission. However, the manufacturer/distributor may post the identity of any pre-approved Independent Marine Surveyor with the commission.

B. The notice of appointment of Independent Marine Surveyor or the approved list shall contain the résumé, curriculum vitae, or qualifications of Independent Marine Surveyor.

C. The commission shall then promptly notify the dealer of the identity of the Independent Marine Surveyor as selected by the manufacturer/distributor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:771.

HISTORICAL NOTE: Promulgated by Office of the Governor, Recreational and Used Motor Vehicle Commission LR 30:2482 (November 2004), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1528 (August 2009).

§1905. Procedure of Designation of Area of Responsibility

NOTE: This Section has been moved from LAC 46:V.4801.

A. Beginning August 16, 2004, the commission shall notify by certified mail each marine product manufacturer/distributor, who has prior to that date failed to designate an area of responsibility for each of its existing dealers, that they must designate an area of responsibility for each dealer within 30 days following receipt of the notifications. Failure to respond to the commission within 30 days shall constitute an absence of designation thereby mandating the areas of responsibility provided for in R.S. 32:781(2)(b).

B. Following August 16, 2004, without such notification from the commission, each marine product manufacturer/distributor shall be responsible for designating an area of responsibility for any new dealer which has not had its area previously designated.

C. Thereafter, any marine product manufacturer/ distributor which was not licensed with the commission prior to August 16, 2004, shall be notified by the commission by certified mail of their responsibility to designate an area of responsibility for their dealers. Failure to designate an area of responsibility for each dealer within 30 days following receipt of the notification shall constitute an absence of designation thereby mandating the area of responsibility provided for in R.S. 32:817(C).

D. Any changes in the area of responsibility once designated must meet criteria as set forth in R.S. 32:817(C).

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:781 and 817.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Recreational and Used Motor Vehicle Commission, LR 32:2481 (November 2004), amended LR 33:1638 (August 2007), repromulgated by the Office of the Governor, Motor Vehicle Commission, LR 35:1528 (August 2009).

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