

## Business Impact Analysis

Agency Name: Ohio Department of Public Safety, Bureau of Motor Vehicles

Regulation/Package Title: **Place of business required for used motor vehicle dealers.**

Rule Number(s): 4501:1-3-08

Date: September 29, 2015

**Rule Type:**

New

5-Year Review

Amended

Rescinded

The Common Sense Initiative was established by Executive Order 2011-01K and placed within the Office of the Lieutenant Governor. Under the CSI Initiative, agencies should balance the critical objectives of all regulations with the costs of compliance by the regulated parties. Agencies should promote transparency, consistency, predictability, and flexibility in regulatory activities. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

### **Regulatory Intent**

1. Please briefly describe the draft regulation in plain language.

*Please include the key provisions of the regulation as well as any proposed amendments.*

In response to a constituent's interest, this rule, which establishes place of business requirements for used motor vehicle dealers, is being simultaneously rescinded and proposed as a new rule under the same rule number due to a substantive change.

4501:1-3-08, "Place of business required for used motor vehicle dealers," specifies all requirements of an established place of business to obtain a used dealers

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license. Section (A) of the current rule has been altered in several ways. Changes include, requiring a used vehicle dealer, who has a retail sales inventory of ten vehicles or less, to ensure the display area contains sufficient space for the vehicles being offered for sale. Furthermore, the new rule ensures that the display lot's required permanent structure shall not be in violation of any applicable building and zoning requirements including any plumbing fixtures. In addition, the new rule requires that a barrier distinguishes the display lot by clearly delineating a separation between a residence or unrelated business. A dealer may, however, upon written request to the registrar of motor vehicles, request an exception to the barrier by presenting a plan to clearly identify, distinguish and segregate through signage or other measures the vehicles being offered for sale and other vehicles located on the premises at any time. If there are no reasonable health or safety threats to the consumer or surrounding area, the dealer acted in good faith in buying or leasing the location and attempts to comply with all restrictions and requirements have been set forth, the registrar may approve the presented plan and its modifications. In the current rule, old paragraph (C) was eliminated in order to remove provisions that any customer may, without an appointment, visit the establishment and view its motor vehicle inventory whether the inventory is located inside a building or behind a fenced off area. Changes to current paragraph (E) clarifies that the registrar (instead of the board) may exercise discretion to grant a used motor vehicle dealers license at a particular location when the applicant has surrendered a new motor vehicle dealer's license and specific circumstances prevented the location from meeting all the requirements of Revised Code section 4517.03.

**2. Please list the Ohio statute authorizing the Agency to adopt this regulation.**

Ohio Revised Code sections 4501.02, and 4517.32.

**3. Does the regulation implement a federal requirement? Is the proposed regulation being adopted or amended to enable the state to obtain or maintain approval to administer and enforce a federal law or to participate in a federal program?**

*If yes, please briefly explain the source and substance of the federal requirement.*

No.

**4. If the regulation includes provisions not specifically required by the federal government, please explain the rationale for exceeding the federal requirement.**

No.

**5. What is the public purpose for this regulation (i.e., why does the Agency feel that there needs to be any regulation in this area at all)?**

The primary purpose for regulation of this rule is to set a standard of uniformity across the industry and allowing for additional flexibility to accommodate small businesses and their means.

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**6. How will the Agency measure the success of this regulation in terms of outputs and/or outcomes?**

The agency will measure success based on the amount of violations for this rule as it comes before the Board in the future for adjudication. Measurements for physical violations of the place of business reflect eighteen cases in two thousand fourteen (2014) that were presented before the motor vehicle dealers board.

**Development of the Regulation**

**7. Please list the stakeholders included by the Agency in the development or initial review of the draft regulation.**

On Tuesday, May 26, 2015 an e-mail with the new draft of the administrative rule was sent to representatives from the dealer associations (Ohio Auto Dealers Association, Ohio Independent Auto Dealers Association, Greater Cleveland Auto Dealers Association, Greater Cincinnati Auto Dealers Association), and constituents that had taken an interest and participated in past rule reviews.

**8. What input was provided by the stakeholders, and how did that input affect the draft regulation being proposed by the Agency?**

Responses from the parties to the administrative rule included, a suggestion that the new language to (A)(3) could be interpreted as the BMV requiring dealers to have plumbing in their dealerships that would cause a major expense. Current paragraph (C) could easily be misinterpreted to require dealers to have their inventory available for viewing without an appointment at a time the dealership is closed. There were also concerns with the process that dealers would have to go through when requesting a variance or an exception to barrier/office requirements. In the current rule, a dealer submits a written request to the registrar of motor vehicles who may approve a variance "subject to board concurrence." The registrar would submit the recommendation to the motor vehicle dealers board to approve or disapprove the recommendation, causing an adverse impact by delaying the issuance of a dealer's license.

After further review, the BMV amended the rule to require all buildings be in compliance with building and zoning codes as applicable, allow the registrar to exercise sole discretion and grant exceptions to certain place of business requirements when specific circumstances exist. In addition, the deletion of old paragraph (C) eliminates confusion over whether a customer may without appointment visit the establishment and view its motor vehicle inventory whether the inventory is located inside a building or behind a fenced off area.

- 9. What scientific data was used to develop the rule or the measurable outcomes of the rule? How does this data support the regulation being proposed?**

N/A

- 10. What alternative regulations (or specific provisions within the regulation) did the Agency consider, and why did it determine that these alternatives were not appropriate? If none, why didn't the Agency consider regulatory alternatives?**

The BMV has worked two alternative regulation in this rule, one, allowing dealers whose retail sales inventory is limited at all times to ten vehicles or less to have a display area of sufficient space for all vehicles being offered for sale. And second, allowing dealers to submit a written request to the registrar for an exception to the barrier requirements by presenting a plan that clearly identifies the segregation through signage or other measures, of the vehicles that are being offered for sale from other vehicles that may be present on the premises.

- 11. Did the Agency specifically consider a performance-based regulation? Please explain.**

*Performance-based regulations define the required outcome, but don't dictate the process the regulated stakeholders must use to achieve compliance.*

The BMV found no performance based regulations for this rule, however, the amendments to the rule allowed for alternative regulations.

- 12. What measures did the Agency take to ensure that this regulation does not duplicate an existing Ohio regulation?**

Research was completed by reviewing the Ohio Revised Code and Ohio Administrative Code.

- 13. Please describe the Agency's plan for implementation of the regulation, including any measures to ensure that the regulation is applied consistently and predictably for the regulated community.**

Implementation will include published updates through the BMV's dealer licensing website, which is typically used for communications between the dealers and dealer licensing section, and updates to the used motor vehicle dealer applications. BMV investigations will be notified of the amended rule regarding the changes in the place of business for used motor vehicle dealers. All violation letters used by the BMV investigations will be updated to reflect the amended rules.

## **Adverse Impact to Business**

**14. Provide a summary of the estimated cost of compliance with the rule. Specifically, please do the following:**

- a. Identify the scope of the impacted business community;**
- b. Identify the nature of the adverse impact (e.g., license fees, fines, employer time for compliance); and**
- c. Quantify the expected adverse impact from the regulation.**

*The adverse impact can be quantified in terms of dollars, hours to comply, or other factors; and may be estimated for the entire regulated population or for a “representative business.” Please include the source for your information/estimated impact.*

- a. There are currently five thousand three hundred and sixty four (5,364) valid used motor vehicle dealers impacted by this rule.
- b. There are initial application fees that do not include the fees for the required used dealer licensing training course, renewal application, and background fees for first time applicants for a used motor vehicle dealer’s license.

The nature of the adverse impact posed by the proposed rule is limited to the extended time of issuance of a used motor vehicle dealer’s license when a written plan to identify the alternative means of the barrier requirements has been submitted to the registrar for an exception. The plan is at the registrar’s discretion as to approve, approve with modifications or deny. Based on the presented plan, costs may be incurred with signage or other alternative measures that are used to distinguish between motor vehicles being offered for sale by the dealer and any other motor vehicles that may be present on the premises at any time.

Dealers are required to maintain compliance at all times for the duration of the license. Dealers that fail to maintain compliance with these rules are subject to administrative sanction, but are granted due process and scheduled for an administrative hearing with the motor vehicle dealer board.

- c. The requirement for all first time dealer applicants to submit a state-wide background web check by the Bureau of Criminal Investigations is estimated to range from thirty-five dollars (\$ 35) to forty-five dollars (\$45) with the initial license fees starting at two hundred fifty-five dollars (\$255) for a motor vehicle used dealer application. For licensed motor vehicle used dealers to maintain their licenses they must renew their permit and dealer plates every two years with renewal fees of fifty dollars (\$50) for the permit, fifty dollars (\$50) for the dealer master plate, and ten dollars (\$10) for each additional dealer plate.

Any motor vehicle used dealer who violates the rules may be subject administrative hearing proceedings, in which they may incur costs in legal representation, and travel expenses. Cost are varied with the variety of legal services in fees which are set by the legal business and based on the economic price of gas and distance traveled for travel expenses the estimated fee is diverse. Sanction from denial of applications up to and including revocation of licenses may be imposed for applicants and dealers who fail to comply with these rules.

**15. Why did the Agency determine that the regulatory intent justifies the adverse impact to the regulated business community?**

The new proposed rule grants flexibility with an agreed upon standard of uniformity for the industry, and at the same time, still protecting the consumer.

**Regulatory Flexibility**

**16. Does the regulation provide any exemptions or alternative means of compliance for small businesses? Please explain.**

The BMV has amended 4501:1-3-08 to include an exemption for a licensed new motor vehicle dealer who has surrendered their licenses due to unforeseen economic impact and the previous licensed location does not meet the requirements of 4501:1-3-08 due to specific circumstances preventing the physical location from meeting requirements; the requirements of the rule may be waived at the discretion of the registrar.

**17. How will the agency apply Ohio Revised Code section 119.14 (waiver of fines and penalties for paperwork violations and first-time offenders) into implementation of the regulation?**

The motor vehicle dealer board's current procedures are to allow for a corrective action within fifteen (15) days of the first notice of a non-compliance violation.

**18. What resources are available to assist small businesses with compliance of the regulation?**

Motor vehicle dealers may call the BMV and speak directly with a dealer licensing customer service assistant and view Ohio Revised Code and Administrative Code requirements via the BMV's dealer licensing website. These small businesses may also contact an Auto Dealer Association in their respective regions as a useful resource for all motor vehicle dealerships whether they sell new, used or lease motor vehicles.

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