

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: Motor Vehicle Dealers and Salespersons

Rule Number(s): 4501:1-3-04, 4501:1-3-08, 4501:1-3-11, 4501:1-3-32, 4501:1-3-33

Date: July 7, 2014

Rule Type:

New

Amended

5-Year Review

Rescinded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.

This package is being filed in response to a scheduled five-year rule review of O.A.C. Chapter 4501:1-3 pursuant to section 119.032 of the Revised Code. Chapter 4501:1-3

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establishes licensing and place of business requirements for used motor vehicle dealers, leasing motor vehicle dealers, and motor vehicle auction owners, and the maintaining of all records dealing in motor vehicles and maintaining a net worth.

4501:1-3-11, "Dealer required to maintain net worth," requires a dealer to maintain a net worth in the sum, pursuant to Section 4517.12 of the Revised Code at least seventy five thousand (\$75,000) dollars in order to be issued a motor vehicle dealer's license. This rule is proposed for amendment to more clearly define assets and liabilities.

All remaining rules in this package are being simultaneously rescinded and proposed as new rules under their same rule numbers due to complete reorganization of content.

4501:1-3-04, "Dealer required to maintain records," requires dealers to maintain all records for vehicles that have been purchased, leased or sold, to require a purchase agreement to include the vehicle serial number and the business name and address as listed on the dealer permit, and the retention of all electronic records for electronic motor vehicle dealers. Changes to the new rule reorganized the content for easier reading, increased the retention requirement from three to five years, retention of all electronic records for electronic motor vehicle dealers, and clarified that records of purchase and lease include business name and address as listed on the dealer permit.

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 license. Changes to the new rule reorganized the content for easier reading, with changes, to includes no landline telephone required, and at the discretion of the motor vehicle dealer board an exemption may be granted 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 this rule due to specific circumstances preventing the physical location from meeting requirements.

4501:1-3-32, "Place of business required for a motor vehicle leasing dealers," specifies all requirements of an established place of business to obtain a leasing dealers license. Changes to the new rule reorganized the content for easier reading, and includes clarification that no separate office is required for leasing if the leasing motor vehicle dealer is located within a valid new motor vehicle, used motor vehicle, or renting motor vehicle dealership.

4501:1-3-33, "Place of business required for motor vehicle auction owner," specifies all requirements of an established place of business for a motor vehicle auction owner. Changes to the new rule reorganized the content for easier reading and includes the option of conducting dealer and general public auctions simultaneously, with separate inventories and clearly identified authorized buyers.

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

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Ohio Revised Code sections 4501.02, 4517.32 and 4517.33.

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?

No, although an amendment has been made to update the record retention in rule 4501:1-3-04 in order to be consistent with federal standards.

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

N/A

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)?

This chapter pertains to a variety of rules that regulate motor vehicle dealers including maintaining dealer records, facility regulations, and maintaining a net worth.

The primary purpose of licensing rules is for all first time and existing used motor vehicle dealers, motor vehicle leasing dealers, and motor vehicle auction owners to maintain all requirements of their physical location throughout the duration of the license pursuant to 4517.03 of the Revised Code.

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

The agency may measure success of regulation of this chapter by the outcome of the variety of rules that regulate motor vehicle dealers and salespersons including licensing, facility regulations, administrative actions, and public meetings.

The outcome for the regulation of maintaining dealer records can be measured based on the decrease in consumer complaints filed with the Attorney General's office.

With the success of regulation of place of business requirements for used motor vehicle dealers, such as a display lot of three thousand five hundred (3,500) square feet, separation of dealership from a residence or another business, identifiable office to include one hundred and eighty (180) square feet, electric, heating of a permanent unit, a business telephone in service, posted business hours and staffed by a licensed salesperson or owner that can engage in the business of selling a motor vehicle. Measurements reflect ten cases in two thousand thirteen (2013) that were present before the motor vehicle dealer's board.

Regulation of a dealer maintaining a net worth of seventy five thousand dollars is to assure the dealership has money to invest in the business and retain its capital for the life of the business to ensure the transfer of ownership of property (motor vehicles).

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With the success of regulation of place of business requirements for motor vehicle leasing dealers, such as, identifiable office with separation from a residence, a business telephone in service, the ability to receive documents electronically, posted business hours with a minimum of thirty hours per week, at least six of which shall occur Monday through Friday, from seven a.m. to five p.m., and staffed by a licensed salesperson or owner that can engage in the business of leasing a motor vehicles. Measurements reflect zero cases in two thousand thirteen (2013) that were present before the motor vehicle dealer's board.

With the success of regulation of place of business requirements for motor vehicle auction owners, such as, identifiable office that is separated from any home or personal residence, motor vehicle dealership, salvage motor vehicle dealership, salvage motor vehicle auction, and salvage motor vehicle pool, includes electric and heating of a permanent unit, a business telephone in service, posted business hours with a minimum of twenty hours per week, at least ten of which shall occur Monday through Friday from nine a.m. to five p.m., and at least one area under a permanent roof that is large enough that motor vehicles may be moved through where such motor vehicles may be offered at auction. Measurements reflect zero cases in two thousand thirteen (2013) that were present before the motor vehicle dealer's board.

Development of the Regulation

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

If applicable, please include the date and medium by which the stakeholders were initially contacted.

On Wednesday August 21, 2013 an e-mail with the five administrative rules that are being reviewed pursuant to section 119.032 of the Revised Code were sent to representatives from the dealers associations (OADA, OIADA, GCADA), and nine industry members that are licensed as auction owners, leasing or used motor vehicle dealers.

On Thursday June 19, 2014 an e-mail with the drafted amended administrative rules were sent to the above established stakeholder groups.

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

Responses from parties to the current administrative rules included, remove the requirement of a landline telephone due to the advanced technologies and telecommunications and the limited availability of landlines in some areas. The net worth was recommended by stakeholders to be increased to ensure that consistent monetary resources remain in order to maintain compliance. The BMV agreed to remove the landline requirement due to advancements in technologies and telecommunications. Though research shows that other states require their dealers to maintain a higher amount of net worth or require a bond, the BMV concluded that to increase the amount of net worth would be an adverse impact to

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small business that are starting out. To maintain a small used motor vehicle dealership, \$75,000 is sufficient as long as business is maintained responsibly and within its financial means.

The only participating stakeholders who commented on the drafted amended rules only consisted of one industry member and dealer association (OIADA). The industry member is opposed to the removal of maintaining a landline, believes the net worth needs to be increased to \$125,000 for additional compliance, and that used motor vehicle dealers shall be held to the same standards as new and leasing motor vehicle dealers by maintaining a regulated number of business hours. The BMV replied to the industry member in regards to the justification of removal of the landline requirement, the adverse impact that would be caused on a small business if net worth was increased, and the strong opposition of the industry and limited authority of the board in order to require hours for used motor vehicle dealers.

OIADA was in opposition of the amendments made to 4501:1-3-04 required to maintain records, for the retention of documents for the sale or lease of a motor vehicle, has been increased from three years to five years to comply with federal standards (49 C.F.R. 580.8). Each sale or lease of a motor vehicle is required to include an odometer statement and/or power of attorney, causing the BMV to make the amended change to come into compliance with the federal regulations. The BMV also removed retention language from section 4501:1-13-01 of the OAC to include the retention standards for electronic dealers, which are set forth by the registrar. Opposition was addressed regarding a separate office used exclusively for leasing transactions, required hours to be maintained and the ability to send and receive electronic documents by motor vehicle leasing dealers. The BMV reviewed the rule and amended the rule to eliminate an office that is used exclusively for leasing as long as the leasing licensee is also licensed as a new, used, or renting motor vehicle dealer at the place of business. Required hours by motor vehicle leasing dealers are a current requirement due to the course of business being primarily between finance companies and financial institutions, which both maintain retail business hours. There has been no opposition from the industry regarding the hours of motor vehicle leasing dealers. The BMV felt it was only appropriate to allow for the use of a variety of means of communication in the ability to send and receive electronic documents, and not limit the requirement to a facsimile.

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 ability to develop alternative means of compliance to meet the requirements is limited by provisions as set forth in sections 4517.03 of the Revised Code.

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

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

Yes, the amended rules, 4501:1-3-08, -32, and -33, the business telephone requirement will no longer be required to consist of a physical landline, but a telephone service of the dealerships choice, such as cellular or digital (e.g. internet, cable).

Amended rule 4501:1-3-32 does not limit leasing dealers to the use of facsimile to send and receive documents, but allows them to maintain the capability of using their choice method of sending and receiving electronic documents (e.g. e-mail, scanning, fax).

Amended rule 4501:1-3-33 no longer limits auctions from conducting public auctions on separate days and times as dealer auctions, but allows for the auction facilities to conduct a public auction of repossessed motor vehicles and motor vehicle dealer auction simultaneously.

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 dealer's and dealer licensing section. BMV investigations will be notified of the amended rules regarding the changes in retention of dealers records, business phone no longer required to be a landline, leasing dealers may use any means of communication to send or receive electronic documents other than facsimile, and auction facilities may simultaneously conduct public and dealer auctions. 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

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“representative business.” Please include the source for your information/estimated impact.

- a. There are currently five thousand two hundred and seventy two (5,272) valid used motor vehicle dealers, thirty six (36) licensed auction owners, and one thousand two hundred and seventy eight (1,278) valid motor vehicle leasing dealers are impacted by the rules.
- b. There are initial application and renewal application and background check fees for first time applicants for motor vehicle auction owner, motor vehicle leasing dealer, and used motor vehicle dealer licenses. There is minimal adverse impact related to time to meet record retention requirements.

The nature of the adverse impact posed by the proposed regulations is limited to time and storage space needed to comply with increased record keeping requirements, costs for equipment related to electronic submission and receipt of documents, costs for staffing businesses during regular business hours, and facility utilization.

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, one hundred and five dollars (\$105) for a motor vehicle leasing dealer application that includes plates, fifty dollars (\$50) for a motor vehicle leasing dealer license with a permit only (out-of-state) and one hundred dollars (\$100) for a motor vehicle auction owner application or two hundred dollars (\$200) for a motor vehicle auction owner application with In-Transit plates. 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. Motor vehicle leasing dealer’s renewal fees are fifty dollars (\$50) for the permit and fifty dollars (\$50) for a master plate with ten dollars (\$10) for each additional plate. Plates for motor vehicle leasing dealers are optional and limited to the motor vehicle leasing dealers who are located in Ohio. Motor vehicle auction owner’s renewal fees are one hundred dollars (\$100) for the permit. Motor vehicle auction owners may obtain In-Transit plates costing a renewal fee of twenty five dollars (\$25) for the master plate and three dollars (\$3) for each additional plate.

It is expected that adverse impact in the form of time related to proposed requirements for increased record retention and additional documentation for each transaction will be

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minimal. Costs relate to if a dealer chooses to reprint any pre-printed forms prior to using remaining inventories. This rule is not requiring that the information be printed on forms.

It is expected that adverse impact in the form of costs related to proposed requirements for allowing auction facilities to conduct a public auction of repossessed motor vehicles and a motor vehicle dealer auction simultaneously. Costs relate to the increase in the everyday costs of facility utilization and more importantly the risk of mismanaging the separate inventories and documentation for a public auction and dealer auction. However, industry members have requested the ability to conduct public and dealer auctions simultaneously.

Any motor vehicle auction owner, leasing dealer or 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?

Section 4517.10 of the Revised Code specifies all dealer application and renewal fees. Fees for dealer assigned plates are regulated by statute in Chapter 4503 of the Revised Code.

The purpose for amending the retention of dealer records is to be compliant with federal standards (49 C.F.R 580.8), mainly regarding odometer statements and power of attorney for each transaction involving the sale or lease of a motor vehicle. Every sale or lease of a motor vehicle must contain an odometer statement and most dealers apply for certificate of title on behalf of their consumer requiring a power of attorney, therefore all accompanying records related to the sale or lease of a motor vehicle will also be retained for a period of five years.

Section 4517.32 of the Revised Code grants the board permission to hold Administrative hearings due to violation of the Revised Code and Administrative Code by dealers.

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

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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, maybe waived at the discretion of the motor vehicle dealer board .

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 Ohio 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.