

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): 4501:1-3-03, 4501:1-3-07, 4501:1-3-09, 4501:1-3-10, 4501:1-3-15, 4501:1-3-16, 4501:1-3-20, 4501:1-3-21, 4501:1-3-22, 4501:1-3-23, 4501:1-3-24, 4501:1-3-24, 4501:1-3-25, 4501:1-3-30, 4501:1-3-35

Date: 9/21/12

Rule Type:

- | | |
|----------------------------------|---|
| <input type="checkbox"/> New | <input checked="" type="checkbox"/> 5-Year Review |
| <input type="checkbox"/> Amended | <input type="checkbox"/> Rescinded |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 establishes licensing and place of business requirements for motor vehicle dealers and salespersons, as well as the administrative process by which the Registrar may take disciplinary action against such licenses and the method by which licensees

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may appeal such action. Within this package is one rule proposed for amendment to reflect procedural changes for uniform signage. Specifically, it is proposed that:

4501:1-3-03, “Sign required to identify place of business,” which requires the suitable display of appropriately sized signage, be amended in paragraph (A) to require signage to be displayed by the entrance of the office, if the sign is not visible from the public roadway.

The remaining rules in this package are being filed as no-change and are as follows:

4501:1-3-05, “Dealer selling as a salesperson for another dealer prohibited,” which prohibits licensed dealers from conducting sales for another licensed dealer;”

4501:1-3-07, “Law enforcement report required with application,” which requires each applicant, including the principal officer, manager, and all trustees of a business to submit a law enforcement report with the application.

4501:1-3-09, “Registrar shall deny license,” which requires the registrar to deny an applicant a dealer’s license if they have been convicted of a felony that has occurred within ten years and is related to the selling, taxing, licensing, or regulation of sales of motor vehicles.

4501:1-3-10, “Requirements for expanded display site for motor vehicle dealers, motor vehicle leasing dealer, or motor vehicle auction owner,” which is an extension located adjacent to or within two hundred feet of the property line of the principally established place of business.

4501:1-3-13, “Method of instituting complaints,” which provides that the board may investigate any license holder for alleged violations of the law or rules of the board.

4501:1-3-14, “Notice of hearing,” which requires the BMV to notify a licensee or applicant of his/her right to request an adjudicatory hearing on the violations against a motor vehicle for possible denial, suspension or revocation of a dealer or salespersons license.

4501:1-3-15, “Date and place of hearing,” which requires the motor vehicle dealer board to set the date, time and place of the hearing, and immediately notify the said license holder.

4501:1-3-16, “Continuances,” which is the opportunity granted to a licensee to postpone or continue a hearing by the motor vehicle dealer board on its own motion for a period of time upon such terms of the vehicle board.

4501:1-3-19, “Stenographer’s record,” which provides that a record of testimony and other evidence shall be submitted at an administrative hearing.

4501:1-3-20, “Hearing procedure,” which outlines the course of appropriate actions of an administrative hearing.

4501:1-3-21, "Evidence," which is physical matter that can be submitted as an exhibit to support the said case of the license holder.

4501:1-3-22, "Briefs," which are documents that outline the points of fact in a case and are filed with the secretary of the motor vehicle dealer board and furnished to opposite parties and attorneys.

4501:1-3-23, "Decision of the Board," which provides that written notification be made to the license holder or applicant on the action of the status of the said license.

4501:1-3-24, "Rehearing's," which is the opportunity of the license holder to file to go before the motor vehicle dealer board to reverse the initial action that was ordered previously by the board.

4501:1-3-25, "Appeals from registrar's order," which provides the process for submitting a written petition of appeal of a motion of action that was ordered by the motor vehicle dealer board.

4501:1-3-26, "Docket," which is documentation of all cases that have been administered a hearing before the motor vehicle dealer board and the public.

4501:1-3-30, "Licensing of leasing employees," this is the licensure of an employee of a motor vehicle leasing dealer that engages in the business of leasing vehicles.

4501:1-3-31, "Exemption from notice of change," which exempts a licensed dealer from the requirement to notify the BMV Dealer Licensing Section of any changes if stock in the dealer or its parent company has been traded.

4501:1-3-34, "Notice of public hearing regarding adoption, amendment, or rescission of a rule," which provides requirements for notice of a public hearing regarding the proposed adoption, amendment, or rescission of a rule.

4501:1-3-35, "Notice of meetings," which is the requirement that the BMV dealer licensing board publish all scheduled motor vehicle dealer board hearings to the BMV Dealer Licensing website fifteen days prior to regularly scheduled meetings with the information to include time, location, and purpose of the meeting.

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

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.

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

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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 and salespersons including licensing, facility regulations, administrative actions, and public meetings.

The primary purpose of licensing rules is for all first time motor vehicle dealer applicants and salespersons applicants to submit a law enforcement report that is checked on a state-wide basis through the bureau of criminal investigations. This is pursuant to sections 4517.12, 4517.13 and 4517.14 of the Revised Code.

To prohibit any person, firm, or corporation who has a valid dealer's license from obtaining a salespersons license to sell for another valid dealer. This rule assist in the deferred practice of conflict of interest or business disputes between dealerships and provides fair opportunity for good business repute as set forth in 4517.20 of the Revised Code.

The requirements set forth for the licensure of an employee of a motor vehicle leasing dealer that engages in the business of leasing vehicles, be licensed as a motor vehicle salesperson.

The requirements for dealer facilities ensures the identification of a business by being equipped with permanent signage that identifies the ownership of the said business in the same name in which the application was filed and is properly maintained and prominently displayed by the entrance of the office, if the sign is not visible from the public roadway as set forth in 4517.04 and 4517.05 of the Revised Code. The business should be easily identifiable to be recognized by a business's potential customers in efforts to conduct a successful profitable business.

Valid dealers have an option to maintain an expanded display site that is adjacent to or within two hundred feet of the established valid license location. With the proper square footage of at least two thousand square feet gives the licensed dealer the option for an additional display lot and still being in compliance of 4517.03 of the Revised Code.

Rules regarding administrative actions assure licensees that complaints and alleged violations will be reviewed and heard in compliance with Chapter 119 of the Revised Code with requirements for the guidelines of an administrative hearing of the motor vehicle dealer board and the administration of due process, which is granted to all valid licensed motor vehicle dealers, salespersons and first time applicants that have been denied a licensed mandated by sections 4517.12, 4517.13 and 4517.14 of the Revised Code. The applicant or licensee may appeal the decision of the registrar and be heard by the motor vehicle dealer board by submission of a request for a hearing as pursuant in 4517.32 of the Revised Code. Board cases are heard in a timely manner and all evidence that is submitted as exhibits by the

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applicant or opposing parties are taken into account during the deliberation process and as small business owners and public representatives the decisions of the board are based in the best interest of the licensee/applicant, the consumer and the safety of the public in order to assist the board in the proper action to be taken in regards to suspension, revocation or uphold a denial of the registrar.

Finally the purpose of proposing rules establishing the requirements for public notice of meetings orders the motor vehicle dealer board to be open to the public and fifteen days prior to the scheduled board meeting the agenda be posted on the BMV, Dealer Licensing website for publication.

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 a state-wide background check conducted by the Bureau of Criminal Investigations can be measured based on the decreased number of motor vehicle dealer board hearings of repeat offenders with past criminal actions taken against them for the purpose of selling or dealing in motor vehicles.

The measured regulation for the prohibiting of a dealer to be a licensed salesperson for another dealership are inconclusive among the three thousand seven hundred thirty three (3,733) first time applicants in two thousand eleven (2011).

Regulation on licensing leasing employees as salespersons based on one thousand three hundred and seventy six (1,376) valid leasing dealers is approximately three percent (3%) of the total licensed salespersons. This helps to mandate who may engage in the contractual agreement of leasing motor vehicles.

With the success of regulation of the facilities, such as the place of business sign, measurements reflect six cases in two thousand eleven (2011) that were present before the motor vehicle dealer board and were revoked or suspended for the non-compliance of their business sign. This regulation can also be measured by the number of first time dealer plates being returned by United Parcel Service and returned mail by the United States Postal Service due to signage not identifying the business name in which was on the application, no sign displayed at the entrance of the office or not visible from the public roadway. Regulation of the expanded display lot is measured by a rare case if any complaints or violations of displaying off site pursuant to 4517.03 of the Revised Code.

The regulation of the administrative actions pursuant to the motor vehicle dealer board administrative process is measured by the thirty four (34) cases in two thousand eleven (2011) that required notification to the applicant and the publication of the set time and place of the administrative hearing.

Development of the Regulation

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

On February 7, 2012 a meeting for the administrative five year rule review, was held with ten representatives from the dealers associations (OIADA, OADA, GCADA), and legal counsel for the dealers associations.

On September 25, 2012 a phone conversation was held with a representative from the Ohio Auto Dealers Association (OADA).

On September 27, 2012 a face to face conversation was held with a representative from the Ohio Independent Auto Dealers Association (OIADA).

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

All parties present reviewed the rules scheduled for the R.C. 119.032 five-year rule review. Rule 4501:1-3-03, “Sign required to identify place of business,” was actively discussed. Stakeholders proposed that enforcement of uniformity should fall to the discretion of the registrar allowing BMV investigators and dealer licensing to make the determination of compliance regarding appropriate size and placement of business signage. In order to enforce some uniformity, it was decided that the rule be modified to require signage be displayed at or near the entrance to the building, and at or near the entrance to the office, if the two places are not the same. With no further discussion the parties present were supportive in all other rules being filed with no change.

The representatives reviewed the amended rule 4501:1-3-03, “Sign required to identify place of business,” and voiced that there may be some confusion in the verbiage that was submitted for the amended rule. Therefore the amended rule has been modified to require the signage to be prominently displayed by the entrance of the office, if the sign is not visible from the public roadway. This modification ultimately makes for a positive identification of the small business.

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?

On average four sets of dealer plates a week are returned via United Parcel Service (UPS) and an average of fifteen pieces of dealer mail a week is returned via United States Postal Service (USPS) due to the uncertainty of the exact location in which the dealership may reside, this potentially is a result of the placement of the business sign not being displayed at by the entrance of the office when the sign is not visible from the public roadway. Stakeholders proposed that the rule be amended to specifically reflect a more appropriate and visible location for the signage. The proposed amendment to this rule implements this change.

No other alternatives for other rules were proposed by stakeholders.

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.

Yes, the amended rule, 4501:1-3-03, regarding signage reflects a performance-based regulation. Although the rule stipulates the required size of the lettering in inches, the reflection of the registered name in which the application was filed, and options for display of the sign, the rule allows each dealer to choose the layout and design and final location of the sign for his or her business.

The remaining rules are being files for five year review per 119.032 of the Revised Code.

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 the resource typically used for communications between the dealer's and dealer licensing section. All dealer licensing applications will include the newly implemented language of the signage requirements. Physical location inspections are completed upon application for licensing, as well as random visits by the BMV investigations personnel will continue, both of which will be opportunities for additional communications.

Adverse Impact to Business

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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.

There are currently eight thousand five hundred and twenty (8520) licensed dealers in Ohio that are impacted by the rules.

The BMV estimates that the proposed amendment to require signage to be prominently displayed by the entrance of the office, if the sign is not visible from the public roadway will essentially ensure that all mail and dealer plates are received by the dealer in a timely manner. The adverse impact may create an additional cost of compliance for stakeholders to relocate or replace the signage if the current placement is not the entrance of the office or visible from the public roadway. However, stakeholders present during the review of these rules shared that the benefit should outweigh the cost of delayed or loss of business operations.

Dealers who violated the rules may be subject to administrative hearing proceedings, in which they may incur costs in legal representation, and travel expenses. Costs are varied with the variety of legal services in which fees are set by the legal businesses and based on the economic price of gas and distance traveled for travel expenses the estimated fee is diverse.

The requirement for all 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).

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

The purpose for dealer facility regulations ensure the identification of a business by identifying the ownership of the said business in the same name in which the application was filed and equipped with permanent sign that is properly maintained and prominently displayed at the entrance of the office, if the sign is not visible from the public roadway , as set forth in 4517.04 and 4517.05 of the Revised Code. The business should be easily identifiable to be recognized by a business’s potential customers in efforts to conduct a successful profitable business.

Regulatory Flexibility

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

No, there are no exemptions or alternative means of compliance for the business signage.

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 BMV dealer board board's current procedures are to allow for a corrective action with-in forty five 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 dealership whether they sell new or used motor vehicles.