

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

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

Regulation/Package Title: Construction equipment auction license

Rule Number(s): 4501:1-3-36 and 4501:1-3-37

Date: January 16, 2013

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☐ Rescinded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.

These rules are being filed in accordance with 4517.17 (D) of the Revised Code to establish regulation of construction equipment auction sales and licensees

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

R.C. 4517.17 and R.C. 4501.02

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- 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.**

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)?**

The primary purpose for regulation is to ensure that construction equipment auctions are licensed by the BMV, background checks administered for each principal business holder, affirm revenue qualifications, annual report requirements outlined by the registrar, and the grounds of revocation, suspension or denial of granted licenses.

Regulation is also in support of the economic growth of the specialized industry of construction equipment sales, with regulation mandated by statute 4517.17 of the Ohio Revised Code.

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

The success is measured by business being carried forth by mandated legislation.

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.

Initial meetings were held with (1) representatives of and attorneys for Ritchie Bros. Auctioneers, a company already engaged in the auctioning large construction equipment in Ohio and interested in applying for a construction equipment auction license under R.C. 4517.17; and (2) representatives of and attorneys for the Ohio Auctioneers Association. Initial information was also received from the Ohio Automobile Dealers Association (OADA).

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

On July 10, 2012, the BMV sent an e-mail with the first draft of the proposed rule (4501:1-3-36) to three representatives or attorneys for the auctions and ODRA.

On November 28, 2012 an e-mail was received from a representative of Manheim Auctions expressing concerns related to the auction operations of Ritchie Brothers licensed location in relation to the provisions of the Ohio Revised Code 4517.17 and 4517.18.

On December 4, 2012 an e-mail from OADA was received expressing the need for additional detailed affirmations of the requirements for a construction equipment auction license and the compliance of record maintenance.

On December 10, and December 20, 2012 e-mails were received from representatives of Manheim with the request to include affirmation on the application and assurances that any licensee comply with the R.C. 4517.17 and 4517.18.

Throughout this process, the BMV has also received telephone calls from these stakeholders expressing similar concerns.

In response to the stakeholder comments and concerns, the BMV:

- Amended draft rule 4501:1-3-36 to expand the application affirmations to include that the applicant is engaged primarily in the business of selling large construction and transportation equipment at auction; meets gross sales and 10,000 pounds or less motor vehicles sales limitations; maintains a facility of at least 90 acres and 60,000 square feet; will comply with R.C. 4517.17 and 4517.18; and will comply with the applicable provisions of R.C. Chapters 4505., 5739., and 5751.
- Drafted new rule 4501:1-3-37 to require the licensee to maintain detailed records of the purchase and sale of all motor vehicles of 10,000 pounds or less; to maintain financial records sufficient to verify gross sales and sales of all motor vehicles of 10,000 pounds or less; to maintain business records in an easily accessible manner and open to reasonable inspection by the Registrar or the Registrar's authorized agents for a period of at least three years; and to make the auction facility open to inspection by the Registrar or the Registrar's authorized agents at all reasonable times prior to the issuance of a license and during the term of the license.

The BMV believes that the revised rule drafts comply with the General Assembly's intent; adequately address stakeholders' concerns, do not impose any unnecessary or unreasonable burdens, and do not exceed the Registrar's statutory authority.

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?

The BMV did not consider scientific data because no such data exists; the regulations simply implement the requirements of the statute.

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 agency (BMV) has been mandated by legislation to establish rules in accordance to 4517.17 of the Ohio Revised Code. The BMV followed precisely the dictates of the statute and did not attempt to include alternatives not authorized by statute.

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 agency allowed for ten per cent gross annual sales revenue come from the sales of motor vehicles having a gross vehicle weight of ten thousand pounds or less, without having to apply for a separate motor vehicle dealer's license.

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

The agency (BMV) regulates all motor vehicle auction licenses and licensees. BMV reviewed all applicable Ohio Revised Code and Ohio Administrative Code provisions relating to auto dealer and auction licensing.

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 physical inspections which are completed upon application for licensing, as well as random visits by BMV investigations personnel that include reviews of purchase and sale records, in which both will be opportunities for additional communications. BMV Dealer Licensing staff and BMV Investigations staff will be trained on the procedures for Construction Equipment Auction licenses.

Published updates will be implemented as well through the BMV's dealer licensing website, which is the resource typically used for communications between the dealer's and dealer licensing section. Publication of the approved proposed rules will be sent to the current licensed construction equipment auction licensee.

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.**

There is currently one licensed construction equipment auction licensee in Ohio that will be impacted by the establishment of the proposed rules.

The statute, R.C. 4517.17(C), imposes a fee of \$7,500.00 for a five-year license. This rule does not impose any additional application or license fees. Also, R.C. 4517.18(A)(3), requires the licensee to file an annual report of sales. This rule prescribes the content of the annual sales report without adding adverse impact.

The rule requires the individual principals of the auction business to submit a criminal background report with the application. This has an adverse impact of less than fifty dollars per principal.

The rule prescribes certain record keeping requirements that may add some expense to the licensee's business. However, BMV considers that the record keeping requirements are the bare minimum to assure that any licensee remains in compliance with the applicable provisions of R.C. Chapters 4517., 4505., and 5739., as specifically required by the enacting legislation, H.B. 114, 129th General Assembly.

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

The BMV determined that any adverse impact is minimal and is essential to assure that any licensee remains in compliance with the applicable provisions of R.C. Chapters 4517., 4505., and 5739., as specifically required by the enacting legislation, H.B. 114, 129th General Assembly.

Regulatory Flexibility

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

No, there are no exceptions or alternative means of compliance for a licensee that holds a construction equipment auction license.

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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 motor vehicle dealer 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. This action is to ensure that the licensee continues to meet all requirements pursuant to 4517.16 of the Revised Code.

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

Construction equipment auction licensee's 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.