

**MEMORANDUM**

TO: Pamela Watkins, Rules Administrator, Ohio Department of Public Safety

FROM: Sydney King, Regulatory Policy Advocate

DATE: August 28, 2014

RE: **CSI Review – Motor Vehicles Dealers and Salespersons (OAC 4501:1-3-04, 4501:1-3-08, 4501:1-3-11, 4501:1-3-32, and 4501:1-3-33)**

On behalf of Lt. Governor Mary Taylor, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Agency as provided for in ORC 107.54.

Analysis

This rule package consists of one no-change and four amended¹ rules proposed by the Ohio Department of Public Safety (ODPS). The rules were reviewed as a five-year rule review as required by ORC 119.032. The draft rules were submitted to the CSI Office on July 7, 2014 with the comment period ending on July 21, 2014.

The rules regulate used motor vehicle dealers, leasing motor vehicle dealers, and motor vehicle auction owners. The regulations provide requirements for licensing, operation and the physical facilities of the business, net worth, and record maintenance dealing in motor vehicles.

The BIA provides a detailed analysis of the many adverse impacts to used motor vehicle dealers, licensed auction owners, and motor vehicle leasing dealers. ODPS states that there are currently 5,272 valid used motor vehicle dealers, 36 licensed auction owners, and 1,278 valid motor vehicle

¹ Rules 4501:1-3-08, 4501:1-3-32, and 4501:1-3-33 are each being amended by more than 50 percent; therefore, the Legislative Service Commission requires that the existing rules be rescinded and replaced by new rules that have the same rule numbers.

leasing dealers in the State of Ohio. Impacts include licensing applications and fees, record maintenance, costs for staffing businesses during regular business hours, and facility utilization.

ODPS describes an engaged stakeholder outreach for the draft rules in the BIA. Industry members, including representatives from dealers associations, were contacted to provide feedback. The rules were amended based on the stakeholder input. During the CSI public comment period, two comments were received from the Ohio Automobile Dealers Association (OADA) and the Ohio Independent Automobile Dealers Association (OIADA). Both comments focused mainly on Rule 4501:1-3-04. Rule 4501:1-3-04 contains several amendments with new requirements for the industry. Due to the filing deadline and the unresolved issues addressed in the comments, ODPS notified CSI and stakeholders that this amended rule will be removed from the rule package and replaced with the original Rule 4501:1-3-04 as a no-change rule. ODPS stated that the stakeholders are in agreement that filing it as a no-change rule is the “best decision at this time.”

OIADA also commented on Rule 4501:1-3-32(F) which regulates leasing dealership hours. ODPS requires motor vehicle leasing dealers’ business hours to include “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.” This provision exists in the existing rule. OIADA opposes ODPS regulating the hours a business must operate stating there are no similar requirements for used and new dealerships. ODPS states the requirement is necessary for consumer protections by allowing for an efficient leasing transaction. The CSI Office engaged in conversations with ODPS and OIADA separately to better understand the justification for the requirement and the impact to leasing dealers. Even with the requirement that leasing dealerships are open six hours a week between 7:00 a.m. and 5:00 p.m., a dealership may operate substantially outside of that window, presumably without putting consumers at risk. Moreover, the 30-hour requirement may pose a significant hardship to small business owners who spend a portion of their working hours purchasing vehicles from auctions, time during which they are unable to keep their dealership open to the public. Because the adverse impact from mandating a business’s hours outweighs the consumer protection concerns provided by ODPS, the CSI Office recommends removing the hours requirement from Rule 4501:1-3-32(F).

Recommendations

For the reasons discussed above, the CSI Office recommends ODPS remove the requirement of “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.” from Rule 4501:3-32(F).

Conclusion

Based on the above comments, the CSI Office concludes that the Ohio Department of Public

Safety **should not** proceed with the formal filing of this rule package with the Joint Committee on Agency Rule Review until it has addressed the recommendation listed above.

cc: Mark Hamlin, Lt. Governor's Office