

CSI - Ohio

The Common Sense Initiative

Business Impact Analysis

Agency Name: Ohio Department of Public Safety, Bureau of Motor Vehicles (BMV)
Regulation/Package Title: Motor Vehicle Dealers and Salespersons

Rule Number(s):

Amended rules: 4501:1-3-01, 4501:1-3-02, 4501:1-3-03, 4501:1-3-04, 4501:1-3-08,
4501:1-3-10, 4501:1-3-21, 4501:1-3-24, 4501:1-3-25, 4501:1-3-30,
4501:1-3-32, 4501:1-3-33, 4501:1-3-35, 4501:1-3-36.

Rescinded –New same rule #: 4501:1-3-07, 4501:1-3-09, 4501:1-3-11, 4501:1-3-20,
4501:1-3-22, 4501:1-3-23.

Rescinded: 4501:1-3-05.

No change rules: 4501:1-3-06, 4501:1-3-12, 4501:1-3-13, 4501:1-3-14, 4501:1-3-15, 4501:1-3-16,
4501:1-3-19, 4501:1-3-26, 4501:1-3-31, 4501:1-3-34, 4501:1-3-37.

New rules: 4501:1-3-17, 4501:1-3-38.

Date: June 12, 2017

Rule Type:

☒ New
☒ Amended

☒ 5-Year Review
☒ Rescinded

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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.

This package is being filed in response to a scheduled five-year rule review of Administrative Code Chapter 4501:1-3 pursuant to section 106.03 of the Revised Code. Chapter 4501:1-3 establishes licensing, place of business requirements for motor vehicle dealers and salespersons, requirements on maintaining records, the requirement of maintaining a net worth, as well as the administrative process by which the Registrar may take disciplinary action against such licenses and the method by which licensees may appeal such action.

The following rules in this package are being filed as amended rules and it is proposed that:

4501:1-3-01, “Used motor vehicle dealer training”, requires every applicant for a used motor vehicle dealer’s license to complete the used motor vehicle dealer training course (training course) that is administered by an authorized course provider. This rule is being amended to include paragraph (C) that allows the motor vehicle dealers board (board) to require a used motor vehicle dealer who has been found to be in violation of Chapter 4517 of the Revised Code and Chapter 4501:1-3 of the Administrative Code to complete the training course.

4501:1-3-02, “Used motor vehicle dealer training; curriculum and course provider requirements”, requires the registrar to authorize a course provider in order to administer the training course and establish the requirements of the content that must be included in the curriculum for the training course. The rule is being amended to include the reference to rule 4501:1-3-38 of the Administrative Code for dates and availability of such material incorporated by reference.

4501:1-3-03, “Sign required to identify place of business”, requires the suitable display of appropriately sized signage and for it to be displayed by the entrance of the office, if the sign is not visible from the public roadway. The rule is being amended to reflect material incorporated by reference, and as applicable, in paragraph (A), the sign must include the name of the business as registered with the Secretary of State.

4501:1-3-04, “Dealer required to maintain records”, requires dealers to maintain all records for vehicles that have been purchased, leased, or sold, purchase agreements which are to include the vehicle serial number and the business name and address as listed on the dealer permit, all electronic records for electronic motor vehicle dealers to be retained, and clarifies that records of purchase and lease include the business name and address as listed on the dealer permit. The amended language proposes in paragraph (A) for records to be provided in electronic or paper format, paragraph (C) all records are to be held for

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three years unless otherwise mandated by federal regulations, paragraph (D) requires active license holders and inactive license holders to maintain the records as set by the requirements in paragraph (C), and in paragraph (E), all records shall be available for inspection within ten days of request.

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 dealer’s license. The amended changes include reorganization of content in paragraph (A)(2) with the definition of “barrier” to accompany the requirement, and paragraphs (A)(3) and (A)(4) include the fifteen day requirement to notify the registrar of changes in the posted business hours and business telephone number. Paragraph (B) is an addition to the rule and includes provisions for dealerships that share a location with a repair facility. These provisions include not requiring a physical barrier at the established place of business if the service facility is owned and operated by each person listed on the dealer’s license, making the display lot distinguishable from repair vehicles with signage, ensuring a private office is available for transacting business in a confidential manner, and guaranteeing the business is staffed by an owner or a licensed salesperson.

4501:1-3-10, “Requirements for expanded display site for motor vehicle dealers, motor vehicle leasing dealer, or motor vehicle auction owner”, discusses an extension located adjacent to or within two hundred feet of the property line of the principally established place of business. Current rule language reads that the board shall revoke or suspend the license of a dealer in violation of this rule, whereas the proposed change allows the motor vehicle dealer board (board) the discretion to suspend or revoke the license of a dealer that is in violation of this rule.

4501:1-3-21, “Evidence”, discusses physical matter that can be submitted as an exhibit to support the said case of the license holder. The amended language includes clarification that specifies all evidence is in accordance to the Ohio rules of evidence.

4501:1-3-24, “Rehearings”, talks about 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. The amended language is being proposed for grammatical corrections.

4501:1-3-25, “Appeals from registrar’s order”, provides the process for submitting a written petition of appeal of a motion of action that was ordered by the motor vehicle dealer board. The amended language is being proposed for grammatical corrections and Administrative Code citation updates/corrections.

4501:1-3-30, “Licensing of leasing employees”, reviews the licensure of an employee of a motor vehicle leasing dealer that engages in the business of leasing vehicles. The amended language includes a detailed clarification of ownership in an attempt to maintain consistency within Chapter 4501:1-3 of the Administrative Code.

4501:1-3-32, “Place of business required for a motor vehicle leasing dealers”, specifies all requirements of an established place of business in order to obtain a leasing dealers license. Amended language in this rule is being proposed to promote uniformity in the office requirements for leasing dealers, used motor vehicle dealers, and motor vehicle auction owners and includes detailed clarification of ownership in an attempt to maintain consistency within Chapter 4501:1-3 of the Administrative Code.

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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 and allows the option of conducting dealer and general public auctions simultaneously, with separate inventories and clearly identified authorized buyers. Amended language in this rule is being proposed to promote uniformity in the office requirements for leasing dealers and used motor vehicle dealers.

4501:1-3-35, “Notice of meetings”, establishes 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; the information is to include time, location, and purpose of the meeting. The proposed rule is being amended with clean-up language to eliminate outdated practices.

4501:1-3-36, “Construction equipment auction license”, specifies the required content of an application and the requirements for an established place of business to obtain a construction equipment auction license, including the specifications of their gross annual proceeds which shall be reported to the registrar on the thirtieth day of April. The rule is being amended to include the reference to rule 4501:1-3-38 of the Administrative Code for dates and availability of such material incorporated by reference.

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

4501:1-3-07, “Law enforcement report required with application”, requires each applicant, including the principal officer, manager, and all trustees of a business, to submit a law enforcement report with the application. Changes to the new rule are being proposed as extending clarification to ownership that includes sole proprietor, officer(s) of a corporation, trustee(s) of a business trust, or in the case of a partnership or limited liability company, partners(s) or member(s), or any such entity as defined in division (A) of section 4517.01 of the Revised Code. This also includes each person listed on the application as an owner (as applicable to business entity type), and they must submit a criminal history record. Those persons who have been convicted of said violations, per the rule, shall provide certified copies of court documents as specified in rule, and in the event of the change in ownership, only those persons who have not previously submitted a criminal history record in the previous twelve months prior to the change of officer application, shall submit a criminal history record.

4501:1-3-09, “Registrar shall deny license”, 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. Proposed changes to the new rule are a title change (“The denial, suspension, or revocation of a license”), the reference to rule 4501:1-3-38 of the Administrative Code for dates and availability of such material incorporated by reference, and the establishment of a comprehensible parameter for the reasons the registrar shall deny an application, which include fraudulent acts in connection with selling and dealing in motor vehicles as referred to in this rule.

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, of at least seventy-five thousand dollars (\$75,000) in order to be issued a motor vehicle dealer’s license. Changes to the new rule include a new title (“Net worth and bond”) and the requirement that each used motor vehicle dealer licensed under Chapter 4517 of the Revised Code post with the Attorney General’s office a surety bond in the amount of twenty-five

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thousand dollars (\$25,000), which if collected upon, would be used solely for the purpose of replenishing funds to the Title Defect Rescission (TDR) fund that were dispersed to compensate a retail purchaser(s) of a motor vehicle who has suffered damages due to failure of the dealer or person acting on behalf of the dealer. Requirements for the used motor vehicle dealer's license include that a copy of the bond must accompany the application before the issuance of a license, and the bond shall be maintained during the entire period of the license. If the bond of a licensee is cancelled and a new bond has not been filed with the BMV, the licensee shall appear before the board for failure to comply with Chapter 4517 of the Revised Code and Chapter 4501:1-3 of the Administrative Code. If a used motor vehicle dealer's license is held or has been held by a new motor vehicle dealer or leasing dealer within 12 months preceding application, and the previous license has not been suspended or revoked, a surety bond is not required.

4501:1-3-20, "Hearing procedure", outlines the course of appropriate actions of an administrative hearing. The changes to the new rule include clarification of the manner in which the evidence is presented to the board by the attorney general and the licensee or their legal counsel during an administrative hearing..

4501:1-3-22, "Briefs", describes documents that outline the points of fact in a case and are filed with the secretary of the motor vehicle dealer board and are furnished to opposing parties and attorneys. The changes to the new rule include a new title ("Filing of protest cases") and an outline of the procedure of filing a protest with the secretary of the board.

4501:1-3-23, "Decision of the Board", provides that written notification be made to the license holder or applicant on the action of the status of the said license. Changes to the new rule specify the provisions that an applicant or a licensee may be subject to, if the board finds they are in violation of Chapter 4517 of the Revised Code or Chapter 4501:1-3 of the Administrative Code.

The following rule in this package is being rescinded, for the content of this rule is duplicated from the statute:

4501:1-3-05, "Dealer selling as a salesperson for another dealer prohibited", prohibits licensed dealers from conducting sales for another licensed dealer.

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

4501:1-3-06, "Military provisions related to processing motor vehicle dealer applications", requires that any application for a license issued under Chapter 4517 of the Revised Code that is submitted by an active duty, armed force, or veteran of the United States military shall be tracked, monitored, prioritized, and expedited for the issuance of the applicable license.

4501:1-3-12, "Administrative penalties", allows the board to order an administrative penalty to any new motor vehicle dealer that has violated sections 4517.22 or 4517.221 of the Revised Code.

4501:1-3-13, "Method of instituting complaints", 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", requires the BMV to notify a licensee or applicant of his/her right to request an adjudicatory hearing on the alleged violations of the Revised Code or rules of the board, which are cause for possible denial, suspension, or revocation of a dealer or salespersons license.

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4501:1-3-15, “Date and place of hearing”, 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”, describes 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”, provides that a record of testimony and other evidence shall be submitted at an administrative hearing.

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

4501:1-3-31, “Exemption from notice of change”, 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”, provides requirements for notice of a public hearing regarding the proposed adoption, amendment, or rescission of a rule.

4501:1-3-37, “Construction equipment auction required to maintain records”, requires construction equipment auction licensees to maintain all records for vehicles having a gross vehicle weight rating of ten thousand pounds or less that have been purchased or sold, purchase agreements which are to include the vehicle serial number, information of the previous owner, the title information, odometer statements, any records for temporary tags sold by the licensee, and financial records to prove the business received more than one million dollars in gross annual sales in Ohio and not more than ten percent of the gross annual sales revenue was from the sale of motor vehicles having a gross vehicle weight rating of ten thousand pounds or less.

Within this package is new proposed rule 4501:1-3-17, “Consent agreements”, which provides the board the authorization to offer a written consent agreement to a licensee who has been found by the board to be in violation of Chapter 4517 of the Revised Code and Chapter 4501:1-3 of the Administrative Code. With the presence of the signatures from the licensee, their legal counsel, and the board, all the terms and conditions will have been agreed upon, and the licensee relinquishes their privilege to an administrative hearing and any appeal rights related to such matters in the consent agreement. At the discretion of the board or licensee, a proposed consent agreement may be rejected therein after, and the right to an administrative hearing and full due process rights are granted.

This package also includes new proposed rule 4501:1-3-38, “Materials incorporated by reference”, which describes the dates and availability of materials incorporated by reference in Chapter 4501:1-3 of the Administrative Code.

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

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Ohio Revised Code sections 4501.02, 4517.03, 4517.05, 4517.07, 4517.12, 4517.17, 4517.22, 4517.32, 4517.33, and 5903.04.

- 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.**

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

The primary purpose of licensing rules is for all first-time used motor vehicle dealer applicants to successfully complete a used motor vehicle dealer training course prior to the issuance of a license. This is pursuant to 4517.05 of the Revised Code. All motor vehicle dealers, construction equipment auctions, and salesperson applicants must 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.

This Chapter includes requirements for the proper maintenance of a dealer's and construction equipment auction's license records, requirements for dealer facilities (to include the specifications of an office and a display lot of thirty-five hundred square footage or a display area of ten spaces that are dedicated to the motor vehicles for sale), and the identification of a business by being equipped with permanent signage that identifies the ownership of the said business by 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 their potential customers in an effort to conduct a successful, profitable business and should maintain all requirements of their physical location throughout the duration of the license pursuant to 4517.03 of the Revised Code. In order to meet the financial requirements as set forth in 4517.12 of the Revised Code, dealers must maintain a net worth of seventy-five thousand dollars (\$75,000), which may be verified by the board upon request, and a surety bond of twenty-five thousand dollars (\$25,000) should be sustained for purposes of replenishing the funds that have been dispersed to compensate retail purchasers of motor vehicles who suffer damages due to failure of the dealer or person acting on behalf of the dealer as set forth in section 4505.181 of the Revised Code.

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. The proper square footage of at least two thousand square feet gives the licensed dealer the option for an additional display lot while still allowing them to be in compliance with 4517.03 of the Revised Code.

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Rules regarding administrative actions assure licensees and the public that complaints and alleged violations will be reviewed and heard in compliance with Chapter 119 of the Revised Code under 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 who have been denied a license 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 through the submission of a request for a hearing as pursuant in 4517.33 of the Revised Code. Board cases are heard in a timely manner, and all evidence submitted as exhibits by the applicant or opposing parties is taken into account during the deliberation process. As small business owners and public representatives, the decisions of the board are based on the best interest of the licensee/applicant, the consumer, and the safety of the public, and the board determines the proper action to be taken with regard to suspension, revocation, upholding the denial of the registrar, verbal warning, and requiring that a licensed used motor vehicle dealer complete the used motor vehicle dealer training.

Finally, the purpose of proposing rules establishing the requirements for public notice of meetings is to order the motor vehicle dealer board to be open to the public; fifteen days prior to the scheduled board meeting, the agenda will 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 will measure success of regulation of this Chapter by the outcome of the variety of rules that regulate motor vehicle dealers, construction equipment auction and salespersons, including licensing, facility regulations, administrative actions, and public meetings.

The outcome for the regulation of maintaining required records can be measured by the number of consumer complaints filed with the Attorney General's office; a decrease would indicate success.

The outcome for the regulation of a state-wide background check conducted by the Bureau of Criminal Investigations can be measured by the 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; a decrease would indicate success.

The outcome for the regulation of place of business requirements for used motor vehicle dealers, leasing dealers, motor vehicle auction owners, and construction equipment licensees can be measured by the amount of compliance seen with regard to their respective place of business requirements; increased compliance and fewer violations occurring would indicate success.

Regulation of a dealer maintaining a net worth of seventy-five thousand dollars (\$75,000) 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), and a surety bond of twenty-five thousand dollars (\$25,000) is for purposes of replenishing the funds that have been dispersed from the Title Defect Rescission Fund (TDR) to compensate retail purchasers of motor vehicles and violations of section 4505.181 of the Revised Code. This provision protects the public by ensuring those who are interested in starting up a used motor vehicle dealership have the financial means to sustain such business and are able to maintain compliance with the law when making sales to consumers. The stability of a dealership is highly influenced by economic trends and consumers' demand. For example, in 2008 when the economy was in a recession, the demand for vehicles was at an all-time

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low, putting dealerships out of business because they did not have the financial means to sustain business, and this left consumers who did purchase vehicles looking for the state's assistance in obtaining a title to their vehicle.

This provision also protects the TDR fund from falling below a threshold of three hundred thousand dollars (\$300,000), which would require dealerships who have never relied on the TDR fund to pay an additional amount of one hundred fifty dollars (\$150) in order to increase the amount of the fund. By mandating all dealerships to put forth money to replenish a fund, we are asking dealerships to help those dealerships who are insolvent and may not have the financial means to sustain their business or have a bad business repute, in most cases.

Measurements of administrative actions pursuant to the motor vehicle dealer board administrative process are reflected by twenty-three cases in the year two thousand fifteen (2015) being reduced to fourteen cases in the year two thousand sixteen (2016) that were presented before the motor vehicle dealer's board with violations of the licensed location. The administrative action requires a notification to the applicant or licensee 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.

The BMV Dealer Licensing Section sent a notice by mail to all licensed motor vehicle dealers regarding a stakeholder meeting that was scheduled to be held on February 22, 2017. The stakeholder meeting was held to review Chapter 4501:1-3 of the Administrative Code with representatives from the dealer associations (Ohio Independent Automobile Dealers Association, Ohio Automobile Dealers Association, Greater Cleveland Automobile Dealers Association), the associations' legal counsel, and one industry member.

On Wednesday, April 5, 2017, there was another meeting that was held to further discuss 4501:1-3-11 "Net worth and bond". Representatives from the dealer associations (OIADA, OADA, GCADA), the associations' legal counsel, and a representative from the Attorney General's Office (AG), Consumer Protection, were present.

Throughout the course of discussions, drafted rules were sent on numerous occasions to all stakeholders including the motor vehicle dealer licensing board.

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

All parties discussed in depth each rule in Chapter 4501:1-3. The following rules were then further discussed by stakeholders: 4501:1-3-07, "Law enforcement report required with application", 4501:1-3-09, "Registrar shall deny license", and 4501:1-3-11, "Net worth". With an updated legal interpretation by the agency's legal counsel and Assistant Attorney General and with the enforcement of the statute, there were significant changes to the said rules. After continued discussions, all parties were supportive of the proposal of new rules, amended rules, and rescinded rules.

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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?

Data was collected from the AG's Office, Consumer Protection TDR fund that included the following information ranging from ten years to current: outstanding amounts dealers still owe for repayment to the fund, a list of the dealerships whom the fund has paid out for, dealers' names of which the AG has filed a judgment against, how many times the fund has paid consumers on behalf of dealers, and those dealers who have repaid the money that was owed. Data was collected from the dealer licensing system that included the dealerships who went out of business within zero months to ten years.

The data from both agencies was combined to show a pattern of how the TDR fund seems to be used by dealers. Out of the two thousand two hundred six (2,206) dealers who went out of business within zero months to five years, seventy-four dealers seemed to use the TDR fund multiple times, totaling an average amount of seventy-seven thousand three hundred sixty-one dollars and eighty-eight cents (\$77,361.88). For the one thousand seventy-nine (1,079) dealers who went out of business within six to ten years, twelve dealers seemed to use the TDR fund less often but totaled an average amount of three hundred eighty-two thousand six hundred fifty-five dollars and ninety cents (\$382,655.90).

The amount of money that is being paid by the TDR fund is significant compared to the one hundred fifty dollar (\$150) one-time fee a dealer is required to pay into the fund at the time of initial application for a dealer's license.

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 data supplied by the Attorney General's office as of April 25, 2017, showed that a total of fifty-five dealers still owe a total of two million four hundred forty-two thousand thirty-three dollars and ninety-seven cents (\$2,442,033.97) to the TDR fund. The number of dealers that still owe in respect to the total number of licensed used motor vehicle dealers in the state of Ohio may be low, but the impact financially is significant.

With an increase in payouts by the TDR fund, the agency is seeing a dealership trend and their inability to maintain a net worth of seventy-five thousand dollars (\$75,000). The net worth requirement was established to assure that the dealership has money to invest in the business and retain its capital for the life of the business and also to ensure the transfer of ownership of property (motor vehicles).

The agency looked at alternative options in place of a surety bond, such as requiring a financial statement signed by a CPA, which can cost hundreds of dollars to obtain. The financial statement may show a net worth within the startup costs, but it does not reflect that the net worth is being maintained throughout the life of the license. Additionally, the BMV employees are not qualified to interpret financial statements in their entirety.

Surrounding states also require their motor vehicle dealers to maintain bonds of similar amounts. Not only would a bond assist in reliability, it is a stepping stone to cost savings on behalf of the state. There is potential for decreasing the number of civil judgment cases being filed by the AG's office,

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opening availability for other cases to be heard. The cost of filing such cases would be reduced, and the time to prepare such civil cases would be spared and used to focus on those cases of a higher priority.

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.

Amended rule 4501:1-3-04, "Dealer required to maintain records", allows for the records to be maintained either electronically or by paper, as long as they are available for review by a BMV Investigator. The BMV will allow a dealer ten business days to produce their records if they are not available at the time of the request before seeking administrative action.

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 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 for several months before the anticipated effective date of January 1, 2018. All dealer licensing applications will be updated to reflect all changes.

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 four hundred seventy-eight (5,478) valid used motor vehicle dealers, thirty-three (33) licensed auction owners, one (1) construction equipment auction, one thousand ninety-two (1,092) leasing dealers, and one thousand six hundred forty-eight (1,648) franchised new motor vehicle dealers that are impacted by the rules.

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- b. There are initial application and background check fees for first time applicants for motor vehicle auction owner, construction equipment auction, motor vehicle leasing dealer, new motor vehicle dealer, and used motor vehicle dealer licenses and then biennial renewal fees. There is minimal adverse impact related to the time needed 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 electronic record keeping requirements, costs to obtain and maintain a bond and net worth, 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. Those dealers who 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 new and used dealer application, one hundred five dollars (\$105) for a motor vehicle leasing dealer application that includes one plate, fifty dollars (\$50) for a motor vehicle leasing dealer license with a permit only (out-of-state), one hundred dollars (\$100) for a motor vehicle auction owner application or two hundred dollars (\$200) for a motor vehicle auction owner application with one In-Transit plate that is renewed biennially, and seven thousand five hundred dollars (\$7,500) for a construction equipment auction that is renewed every five years. For licensed motor vehicle new and 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 dealers' 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 owners' renewal fees are one hundred dollars (\$100) for the permit. Motor vehicle auction owners may obtain In-Transit plates costing a renewal fee of one hundred dollars (\$100) for the master plate and three dollars (\$6) for each additional plate. The mentioned dealer types (new, used, leasing, etc.), excluding auction owner, are all required to pay one hundred fifty dollars (\$150) into the TDR fund. A used motor vehicle dealer first-time applicant is required to complete the used motor vehicle dealer training course, which costs approximately two hundred dollars (\$200). The fees for the training course are set by the authorized course provider, not the BMV. The proposed requirement for first-time used motor vehicle dealer applicants to maintain a twenty-five thousand dollar (\$25,000) bond is based on the credit of the applicant, meaning costs could range from starting at one hundred eighty-eight dollars (\$188) up to two thousand five hundred dollars (\$2,500) per year.

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Any motor vehicle auction owner, construction equipment auction, leasing, new, 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. Costs vary with the variety of legal services, which are set by the legal business and based on the economic price of gas and travel expenses; the estimated fee is diverse. The proposed rule to implement consent agreements as an alternative to appearing before the Board deters the cost of travel expenses and reduces costs incurred by legal representation. Sanctions including 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?

According to section 4505.181 of the Revised Code, it specifies that new and used motor vehicle dealers, construction equipment auction, and leasing dealers are required to pay a fee for the TDR fund, and actions of non-payment are regulated by the statute. In addition to statute, the dealer associations, BMV, and Attorney General's Office believe that the bond requirement assists in decreasing the cash flow from the TDR fund by allowing for collections from the bond, whereas the AG is left with unpaid judgments against dealers who then often go out of business. It also represents tangible evidence financially, unlike the current requirement of confirmation of net worth of seventy-five thousand dollars (\$75,000). From a consumer's point of view, we believe adding the bond requirement may instill a trustworthy relationship again between a dealer and consumer.

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

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.

4501:1-3-07, "Criminal history record required with application", allows an exemption when officers change to those applicants who currently hold a license or have submitted a criminal history record within the twelve months prior to the submission of an officer change; those individuals would not be required to complete another criminal history record.

4501:1-3-08, "Place of business required for used motor vehicle dealers", allows for an exemption to permanent separation for those used motor vehicle dealers whose established places of business include a repair facility. No permanent separation inside between the two businesses will be required if the owner of the dealership is also the owner of the repair facility and there is an office of one hundred eighty (180) square feet that is segregated from a waiting area in order to maintain the privacy of a customer's personal information when dealing in the sale of a motor vehicle.

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4501:1-3-11, “Net worth and bond”, allows an exemption that would not require a bond to be held by a used motor vehicle dealer who holds or has held a new motor vehicle dealer’s license, used motor vehicle dealer’s license, or leasing motor vehicle dealer’s license within one year preceding the date of the application.

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’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, and, upon request, can have a BMV Investigator schedule a pre-application site visit. These small businesses may also contact an Ohio Auto Dealers Association in their respective regions, which is a useful resource for all motor vehicle dealerships whether they sell new, used, or leased motor vehicles.