



Common Sense Initiative

Mike DeWine, Governor
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Business Impact Analysis

Agency, Board, or Commission Name: Ohio Department of Public Safety, Bureau of Motor Vehicles (BMV)

Rule Contact Name and Contact Information:

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Regulation/Package Title (a general description of the rules' substantive content):

Requirements for an established place of business for a used motor vehicle dealer

Rule Number(s): 4501:1-3-08

Date of Submission for CSI Review: 04/14/2021

Public Comment Period End Date: 04/28/2021

Rule Type/Number of Rules:

New/___ rules

No Change/___ rules (FYR? ___)

Amended/ 1 rules (FYR? N)

Rescinded/___ rules (FYR? ___)

The Common Sense Initiative is established in R.C. 107.61 to eliminate excessive and duplicative rules and regulations that stand in the way of job creation. Under the Common Sense Initiative, agencies must balance the critical objectives of regulations that have an adverse impact on business with the costs of compliance by the regulated parties. Agencies should promote transparency, responsiveness, predictability, and flexibility while developing regulations that are fair and easy to follow. Agencies should prioritize compliance over punishment, and to that end, should utilize plain language in the development of regulations.

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Reason for Submission

- 1. R.C. 106.03 and 106.031 require agencies, when reviewing a rule, to determine whether the rule has an adverse impact on businesses as defined by R.C. 107.52. If the agency determines that it does, it must complete a business impact analysis and submit the rule for CSI review.**

Which adverse impact(s) to businesses has the agency determined the rule(s) create?

The rule(s):

- a. Requires a license, permit, or any other prior authorization to engage in or operate a line of business.**
- b. Imposes a criminal penalty, a civil penalty, or another sanction, or creates a cause of action for failure to comply with its terms.**
- c. Requires specific expenditures or the report of information as a condition of compliance.**
- d. Is likely to directly reduce the revenue or increase the expenses of the lines of business to which it will apply or applies.**

Regulatory Intent

- 2. Please briefly describe the draft regulation in plain language.**

This rule sets forth the physical requirements for the established place of business of a used motor vehicle dealership. The proposed amendment is to strengthen the requirements for consumer protection, to eliminate the licensing of those dealerships that are not in the business for the appropriate reasons, and to curb illegal activities that are being found and using the dealership/license as a front.

The proposed amendment would reduce the number of hours required by a used motor vehicle dealership to be open to the public no less than five hours a week with those hours being eight a.m. to five p.m. Monday thru Friday. The reduction of twenty hours will still ensure dealerships/authorized personnel are accessible during normal business hours to assist consumers, BMV Investigations, and the Attorney General's Office (AGO).

The AGO Consumer Protection Section receives consumer complaints relating to sales of new/used motor vehicle dealers as well as other types of retail businesses.

In 2019, used motor vehicle dealers accounted for four hundred eighty one thousand and nine hundred eighteen (481,918) retail titles. The AGO had an estimated four thousand five

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hundred and eight-five (4,585) complaints for sales of new/used dealers, which included the following but not limited to; two thousand two hundred and sixty-one (2,261) complaints were failure to deliver title; one thousand fourteen (1,014) complaints for misrepresentation/failure to disclose/AS-IS; three hundred and fifty-nine (359) complaints were for cancellation rights/refund/return policy; three hundred and eight-nine (389) complaints were for poor service/shoddy work/repairs and services; and, one hundred and nine (109) complaints were for repossession. Some complaints resulted in the AGO paying out a total amount of ninety-six thousand nine hundred twenty-two dollars and eighty-eight cents (\$96,922.88) to consumers from the title defect rescission fund.¹

In 2020, used motor vehicle dealers accounted for four hundred sixty thousand and nine hundred eighteen (460,918) retail titles. The AGO had an estimated three thousand five hundred and ninety-one (3,591) complaints for sales of new/used dealers, which included the following but not limited to; one thousand seven hundred and eight (1,708) complaints were failure to deliver title; six hundred and fifty-three (653) complaints for misrepresentation/failure to disclose/AS-IS; four hundred and fourteen (414) complaints were for cancellation rights/refund/return policy; three hundred and fifty-six (356) complaints were for poor service/shoddy work/repairs and services; and, sixty-seven (67) complaints were for repossession. Some complaints resulted in the AGO paying out a total amount of eighty-eight thousand six hundred seventy-one dollars and six cents (\$88,671.06) to consumers from the title defect rescission fund.

As of February 11, 2021, the AGO shows there is still an open balance (money owed) for TDR of one million ninety one thousand two hundred twenty-one dollars and twelve cents (\$1,091,221.12). This debt is a reflection of many factors, to name a few, dealers abandoned location, not able to contact the dealer via phone or at licensed location, lack of regulation on finance companies, and dealers falsifying their net worth requirement, etc.

The Bureau of Motor Vehicles (BMV) Investigative Unit conducts all physical inspections for auction, new, used, leasing, and salvage dealers' established place of businesses. In 2019, used dealer (only) inspections conducted² for either a newly established dealer, a random inspection³ or an amendment to a current dealers license (name change, move, etc.) was one thousand nine hundred and twelve (1,912) with five hundred and twenty-eight (528) of those inspections being failed for various reasons such as, location abandoned, no one attending the location during posted business hours, location not being attended by a licensed

¹ The Title Defect Rescission (TDR) Fund was created to maintain and administer refunds to retail purchasers of motor vehicles who suffer damages from motor vehicle dealers who fail to provide a valid certificate of title in the purchaser's name within the statutorily required period of time.

² The inspection numbers only reflect those inspections that were assigned and completed within the year 2019. These numbers do not include inspections that were assigned in the previous year(s) or inspections that were not completed until after 2019.

³ Random inspections are assigned by the Dealer Licensing Section initiated by BMV Investigations. These inspections are initiated for reasons such as, consumer complaints, not able to contact dealer/owner, returned mail by USPS or UPS Ground stating location is vacant, or last inspection has been over three years.

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salesperson or owner, no separation from a residence or another business, the business sign has been taken down/or not visible, the dealership telephone number is no longer in working order, or the physical location is out of compliance (lot, office, etc).

In 2020, used dealer (only) inspections assigned for either a newly established dealer, a random inspection⁴ or an amendment to a current dealers license (name change, move, etc.) was one thousand three hundred and seventy-one (1,371) with three hundred and twenty-six (326) of those inspections being failed for such reasons as above. NOTE: Due to COVID dealers were given grace on attending their licensed locations during the stay at home order and in the heighten time of the pandemic. However, the BMV did not see a decline in used dealer applications being submitted or consumer complaints being submitted to the AGO.

- 3. Please list the Ohio statute(s) that authorize the agency, board or commission to adopt the rule(s) and the statute(s) that amplify that authority.**

R.C. 4501.02.

- 4. 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.

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

N/A.

- 6. 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)?**

As outlined in question #2 the numbers show the consumer complaints for not receiving certificate of titles to their motor vehicles, etc. and the dealer not being available for contact by the consumer, BMV Investigations, Dealer Licensing Section, and the AGO. In 2019 and 2020, a total of five hundred and ninety-four (594) used dealers licensed locations were found to be abandoned by the dealership with no notification submitted to the BMV as required by the Ohio Revised Code. It has also been found that dealers are just posting their two hours on the weekends and not actually present or during late night hours (12:00 am – 2:00 am). Individuals are also obtaining a dealers license in Ohio so that they can attend auctions in other states and wholesale only. They are not actually doing any business in Ohio at all. Those individuals find an established place of business that meets the minimum

⁴ Random inspections are assigned by the Dealer Licensing Section or initiated by BMV Investigations. These inspections are initiated for reasons such as, consumer complaints, not able to contact dealer/owner, returned mail by USPS or UPS Ground stating location is vacant, or last inspection has been over three years.

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requirements to get a dealers license and then disappear, although continue to use their Ohio dealer permit number and Ohio dealer license plates. There have been locations that were/are being used for illegal activity and multiple complaints have been received from local zoning agencies for dealerships not adhering to local, city, and municipality law/regulations.

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

We will be able to measure the success by the number of consumer complaints filed with the AGO and BMV Investigations and administrative hearings that are heard by the Motor Vehicle Dealers Board (MVDB).

8. Are any of the proposed rules contained in this rule package being submitted pursuant to R.C. 101.352, 101.353, 106.032, 121.93, or 121.931?

N/A

Development of the Regulation

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

The BMV has worked in drafting the amended rule with the Ohio Independent Auto Dealers Association (OIADA) and the Ohio Auto Dealers Association (OADA). The draft rule was available for two weeks for comment to stakeholders via www.OhioAutoDealers.com, beginning March 11, 2021 until 11:59 pm March 23, 2021.

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

All information is paraphrased from written communication received via emails from stakeholders. For original communications see attachments to this document.

- OIADA believes dealers should be able to be “accessible” by the public versus “being open” to the public due to business being pivoted online. Dealers should not be required to maintain hours but to be available via appointment only. If BMV Investigations want to conduct an inspection they can contact the dealer. If someone from the dealership does not answer or respond to the BMV, AGO or consumer in an acceptable amount of time, the BMV should be able to restrict the dealer license from processing title transfers until such contact has been made. OIADA feels that the BMV should have the authority to act when a dealership has been deemed abandoned, has unresolved consumer complaints, and consumer title issues.*
- Ernies Auto LLC states he is a one man show. With all duties necessary to run the place is very difficult to be pinned down to any amount of set hours. Attending*

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auctions, previewing, picking up, dropping off vehicles along with transporting, etc. takes a lot of time. This is a small low volume specialized vehicle dealership with a good portion of the sales are out of state. The dealership never gets walk-ins and does not want them, everything is by appointment only. Freedom and flexibility are the top reasons anyone starts a business of their own.

- ***Fawsitt Motors, LLC*** states that the small business is ran by the sole employee and sells highline used automobiles all over the country. Approximately 50% of the business is out of state and online. Having two hours allows for flexibility to operate the business mainly by appointment only. This is a non-traditional business model.
- ***Pro Muscle Car, Inc.*** claims that daily operations such as travel (in and out of state) to source vehicles for resale (auto auctions, auto events, dealer networking, transport of vehicles (in and out of state), title transfers for purchases and sales, maintenance of vehicles, body repairs, test-driving vehicles, customer appointments, marketing, physical space maintenance and ordering/maintain stock supplies for the operations. Imposing a mandatory “minimum hour of on-site operation” directly affects the feasibility and success of owning a used dealership in Ohio. The proposed rule does not consider the use of technology (online business hours) in addition to the traditional brick-and-mortar business model to accommodate the unreasonable mandated hours. Mandating unnecessary hours of business including those on-site and defined within a Monday through Friday will cause current owners to closer their business and inhibit future entrepreneurs in the state and should not be mandated to any required hours.
- ***Jarretts Auto Sales, Inc.*** writes that the dealership has been owned about five years and has always been open one day a week for a few hours and by appointment. With the current requirement in hours, there is no time to go to auctions and repair cars. We have no salesperson, no mechanic, and no detailer, we do it all on our own. It should be up to the business owner to decide what hours they are open.
- ***CD Auto Group, LLC*** writes, that Ohio is in the stone age with dealer rules and acting very non-business friendly. Ecommerce is the current/future for buying everything, including automobiles. Retail is dead or dying. It should be no concern of the hours maintained as long as common ethics and procedures are in place to hold a dealer permit. Our entire business is online sales of exotic muscle cars and specialty type collector vehicles and trucks. All inventory is kept in a secured, climate controlled pole barn and only available to view by appointment only. Rather than hours mandate the rules should include the following to maintain a dealer permit; owner must attend Ohio dealer education and online continuing education every two years with a test required to keep permit; no criminal record allowed and periodic

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updated background checks on existing dealers; must file proof of dealers insurance policy; valid business filing with the Secretary of State and in good standing; valid registration with Ohio Sales/Use Tax; demonstrate proper records and audited every three to five years; and provide annual financial statement or tax return. These requirements would weed out those who are pretending to be a dealer so they may buy at wholesale.

- ***Patriots Auto Sales*** states this is a small dealer that handles every aspect of the business by themselves. This dealership is used as an additional source of income and the increased hours of operation of twenty-five hour is a negative impact. We can remain in compliance with existing requirements without additional hours of operation.
- ***Fueled by Diesel, LLC*** states this is a small dealer that handles every aspect of the business by themselves. The response time and personal communication with customers and offering appointment times in addition to my normal business hours is what the dealership takes pride in. This dealership is used as an additional source of income and the increased hours of operation of twenty-five hour is a negative impact. We can remain in compliance with existing requirements without additional hours of operation.
- ***Allen Motors, LLC*** writes, this is a small business that endured added stress with the required twenty-five hours. With the required hours and having to be at the office, there is not time to attend auctions/sales. The new proposed minimum of five hours would put us back in place of operating again.
- ***Don Johnson Motors, LLC*** claims they are a one person operation that was open much more than the previous required two hours a week and was able to attend auctions, repair and clean vehicles and complete paperwork. When the required twenty-five hours was mandated a salesperson was hired. But the unavailability of good used cars and very high prices was a struggle in the business. The BMV needs to eliminate the bad dealers and allow the good hardworking honest ones to stay in business. To allow us to stay in business the reduction of five hours per week is pleasing to hear.
- ***Enon Auto Sales*** writes that the hour requirement should be changed from the two hours due to those people who took advantage of that and made business difficult for those who are actually in the dealer business. It is suggested that ten hours per week be mandatory from 10 am – 5 pm, fulfilling requirement in two days.

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- **Sabettas Classics** claims they do not see a problem, as long they are open the hours that say they will be open. There are enough regulations on small business. However, it is a good change to reduce the required weekly twenty-five hours to five hours.
- **Auto Assets** objects to the proposed change in hours for it allows more people to apply for a used car dealer license that will not take the privilege of having the license seriously and just want to “dabble” in used cars. If a dealer cannot commit to twenty-five hours a week, what kind of commitment are we offering customers post sale. This industry has a terrible reputation and needs to attract professionals that are dedicated to changing the perception to the public.
- **Bob Snyder Auto Exchange** writes that twenty-five hours is quite a hardship for small dealerships when a large amount of communication with customers happens during non-business hours. This is the preferred way of business for consumers. Being at a desk is hardly a productive use of managerial time.
- **Ready2Ryde Auto, LLC** claims that the old hours would make car lots more accessible to people and easier for the dealer to be open for short amount of times on more days than on days with longer hours.
- **Martins Auto Sales** states they are small used car lot that shows cars by appointment only and it is ridiculous to have to be at the lot twenty-five hours. The idea of five hours allows the dealership to get inspections and title done and still show cars by appointment.
- **Ride Smart, Inc.** claims the BMV Inspectors can just schedule an appointment instead of a dealership having open hours. This is a one-person operation with a very erratic schedule that requires many hours and a lot of flexibility. The schedule is difficult due to; going to auctions multiple days a week (some out of state); researching cars on Craigslist; transporting cars to and from auctions, mechanics, body repair shop, glass repair shop, detail shop, the car wash; go do title work; and recordkeeping, payroll, and taxes visit with the accountant. This is a tremendous amount of work and difficult for one-person to get anything done and try to manage even a posted five-hour schedule.
- **674 Sales, LLC** states that if the BMV would like to contact dealers they can reach them by phone for most viable dealers will answer and respond quickly. Business hours should be left to the business owner’s discretion. To be open during business hours is an increase in overhead and puts undue financial pressure that is not warranted. The dealership is against the twenty-five hours, against the five hours, and against the previous two-hour requirement. The business hours should be posted and if the dealership wants to be open by appointment only and sell online or

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whatever the dealership decides to do so be it. The BMV should not have power to mandate business hours or private business owners.

11. 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.

12. 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 Dealer Licensing Section, BMV Investigations, and AGO are experiencing difficulties connecting with dealerships on a daily basis. Dealers are not at their locations during posted business hours and/or are not available via phone. The BMV had removed the requirement of having a landline phone due to those services being obsolete for most areas and cell phones being the device that most dealers use for contact, attending multiple online auctions, email, texts, etc. However, the challenges arise with cell phones, as numbers are changed and not reported to the BMV, the voicemail box is full so a message cannot be left for the dealer, and/or the number is disconnected.

In addition, most states also require a set number of business hours to be maintained by dealerships, as they are a retail business. A few examples of surrounding states and two out west, just to name a few, include; Indiana requires at least thirty (30) hours a week during normal business hours; Illinois requires dealers to be open five out of the seven days a week with a minimum of four (4) consecutive hours per day; Michigan requires a minimum of thirty (30) hours a week; Pennsylvania requires a minimum of twenty (20) hours a week between the hours of 7:00 a.m. – 9:00 p.m. or open to the public for ten (10) hours a week 7:00 a.m. – 9:00 p.m. with the remaining ten (10) hours for appointments; Virginia requires a minimum of twenty (20) hours per week with ten (10) of those between 9:00 a.m. – 5:00 p.m.; and Arkansas and Colorado require a minimum of three days per week with a continuous four (4) hours per day between 8:00 a.m. – 9:00 p.m.

13. 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.

N/A

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

Researched the Revised Code and Administrative Code to ensure there was no duplication of regulation. Research was also done on RegExplorer to ensure no duplication or contradiction exists.

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15. 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.

Notification will be shared via social media, a message on the Dealer System Dashboard and collaboration with the associations to communicate with their members. Continued random inspections will continue as a normal course of business, which include violation letters and an opportunity for the dealers to come into compliance with the laws and rules. Applications and website will be updated to also reflect the requirement.

Adverse Impact to Business

16. 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; and

There are currently five thousand four hundred and twenty-eight (5,482) Used Motor Vehicle Dealerships that are licensed by the State of Ohio. Of the total Used Dealerships, fifty-eight (58) of them are pending review for a possible board case, twenty (20) are active board cases, two (2) are being offered consents (minor physical violations only), seventeen (17) are pending a hearing date, twelve (12) are pending suspension and four (4) are pending revocation from the recent hearings.

b. Identify the nature of all adverse impact (e.g., fees, fines, employer time for compliance,); and

There are initial application fees that do not include the fees for the required used dealer licensing training course, renewal application, and background fees for first time applicants for a used motor vehicle dealer’s license.

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.

There are judgements filed against dealers who do not comply with the AGO and default in payments to TDR. These judgements also include a civil fine of ten thousand dollars (\$10,000) in addition to the amount owed to TDR.

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.

The requirement for all first time dealer applicants; 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), the initial dealer license fees starting at two hundred fifty-

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six dollars (\$256), with one hundred and fifty dollars (\$150) going to the Attorney General for the Title Defect Rescission (TDR) Fund, and must obtain a surety bond for \$25,000 that is to be filed with the Attorney General's Office for the TDR. 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.

Any motor vehicle 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.

Any used motor vehicle dealer who fails to deliver title as outlined in the law, a consumer may file a complaint with the AGO which may result in a judgement filed against the dealer if they do not comply and/or default in payments to TDR. These judgements also include a civil fine of ten thousand dollars (\$10,000) in addition to the amount owed.

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

The proposed amendment helps assist those who rely on the industry to make a living, maintain compliance and to protect the consumers by ensuring contact with the dealer is made available during a normal business schedule.

The current rule requires used motor vehicle dealers to be open to the public no less than twenty-five hours a week, with at least ten of those hours being between nine a.m. to five p.m. Monday through Friday. This amendment to the rule was discussed and agreed upon between the BMV and the industry to change the hour's requirements. The BMV also received no adverse comments from stakeholders, until the effective date of the new requirement.

Regulatory Flexibility

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

The proposed amendment allows discretion for the dealers to still maintain hours on the weekends and evenings outside of the five hours, that must be Monday through Friday.

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19. 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 allows for a corrective action for violations within fifteen (15) days of the first violation notice.

20. 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 Auto Dealer Association in their respective regions as a useful resource for all motor vehicle dealerships. In addition to these resources, all used motor vehicle dealers who apply for a license must complete a pre-licensing education course through an approved course provider, listed on the website.