

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Rescinded –New same rule #: 4501:1-3-07, 4501:1-3-09, 4501:1-3-11, 4501:1-3-20, 4501:1-3-22, 4501:1-3-23.

Rescinded: 4501:1-3-05.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

5-Year Review

Amended

Rescinded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.

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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,

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

- 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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

77 SOUTH HIGH STREET | 30TH FLOOR | COLUMBUS, OHIO 43215-6117

CSIOhio@governor.ohio.gov

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.

4501:1-3-01

Used motor vehicle dealer training.

- (A) Except as otherwise set forth in divisions (B)(2) and (B)(3) of section 4517.05 of the Revised Code, every applicant for a used motor vehicle dealer's license must successfully complete an approved classroom or online training course administered by an authorized course provider as set forth in rule 4501:1-3-02 of the Administrative Code.
- (B) Every applicant that is required to complete the training course shall present a copy of his or her certificate of completion issued by the authorized course provider at the time of application.
- (C) Notwithstanding the requirements of section 4517.05 of the Revised Code, any licensed used motor vehicle dealer found by the board to be in violation of Chapter 4517. of the Revised Code or Chapter 4501:1-3 of the Administrative Code may be required to complete the used motor vehicle dealer training course by an authorized course provider.

4501:1-3-02

Used motor vehicle dealer training; curriculum and course provider requirements.

[\[Comment: For dates and availability of material incorporated by reference in this rule, see rule 4501:1-3-38 of the Administrative Code.\]](#)

(A) The registrar shall issue a certificate of approval to an authorized course provider to administer the used motor vehicle dealers training course mandated by section 4517.05 of the Revised Code and rule 4501:1-3-01 of the Administrative Code. In order to be an authorized course provider, an entity must meet the following requirements:

- (1) Either be an institution of higher learning as defined in section 3345.12 of the Revised Code or a professional or trade association that has been in existence for more than five years and has a majority of members who are motor vehicle dealers licensed in Ohio;
- (2) Submit ~~an application prescribed by the registrar, a "Training Course Provider Application," form "BMV-4326," (September, 2013), that includes a~~ [with a copy of the](#) training course curriculum that meets the requirements of paragraph (B) of this rule;
- (3) Meet all of the other requirements set forth in section 4517.05 of the Revised Code and this rule.

(B) The curriculum submitted for review in accordance with paragraph (A)(2) of this rule shall meet the following requirements:

- (1) Consist of no less than a minimum of six hours classroom or equivalent online training;
- (2) Include pages that are all consecutively numbered;
- (3) Be organized into units or lessons and include a table of contents;
- (4) Provide a curriculum that clearly sets forth the expectations of the course and is easy to navigate;
- (5) Provide appropriate content-based exercises that actively engage the students in the learning process including, but not limited to, instructional methods such as videos, games, activities, or tests;
- (6) Allow the applicant to review previously completed sections and resources

included in the course curriculum;

- (7) Ask content-based questions that are related to the lesson that is being completed. Such questions must be of a sufficient complexity that they cannot be easily answered without having reviewed the course material. If a question is answered incorrectly, the provider must provide constructive feedback and the correct answer;
- (8) Authorized course providers shall not include any content that promotes, sells, or offers goods, products or services in the training course curriculum;
- (9) Address the following topics and subject matters:
 - (a) The used motor vehicle dealer requirements set forth in Chapter 4517. of the Revised Code and Chapter 4501:1-3 of the Administrative Code, including but not limited to, those pertaining to a dealer's established place of business;
 - (b) The duties and responsibilities of the motor vehicle dealers board as set forth in Chapter 4517. of the Revised Code and Chapter 4501:1-3 of the Administrative Code;
 - (c) Acts and omissions that may result in suspension or revocation of a used motor vehicle dealer's license as set forth in Chapter 4517. of the Revised Code and Chapter 4501:1-3 of the Administrative Code;
 - (d) The issuance of temporary licenses pursuant to section 4503.182 of the Revised Code;
 - (e) The duties and responsibilities in performing out of state inspections pursuant to section 4505.061 of the Revised Code;
 - (f) The registration requirements for manufacturers, dealers, and distributors pursuant to section 4503.27 of the Revised Code;
 - (g) The display and proper use of license plates issued to manufacturers, dealers, and distributors pursuant to section 4503.30 of the Revised Code;
 - (h) All applicable federal and state laws governing the sale and distribution of

motor vehicles, including but not limited to, those pertaining to the titling of vehicles, the title defect rescission fund, sales tax, motor vehicle financing, document fees, retail agreements, repossession of motor vehicles, and consumer protection.

(C) Every authorized course provider must meet the following requirements with respect to the administration of the training course:

- (1) Provide the training course at least once every ninety days at a date and time determined by the course provider;
- (2) Provide written notification to the registrar and the motor vehicle dealers board on an annual basis and any changes as applicable of the date, time, location, length, content, and cost of each training course;
- (3) Maintain records of attendance for each training course for a minimum of one year from the date of the course, and make such records available to the registrar and the motor vehicle dealers board upon request;
- (4) Provide a certificate of completion to all individuals who successfully complete the training course that includes the following information:
 - (a) The name of the student;
 - (b) The name, address, and telephone number of the course provider;
 - (c) The course provider number provided by the registrar;
 - (d) Whether or not the student completed the training through a classroom course an online training course, or a combination of both;
 - (e) The length of the course;
 - (f) The start and completion dates of the training course attended by the student;
 - (g) A statement certifying that the student identified on the certificate of completion has successfully completed the program;
 - (h) The name and signature of the course instructor.

- (D) In addition to the requirements set forth in paragraphs (A) to (C) of this rule, online training course providers must also meet the following requirements. For the purpose of this rule, "online training course" means a training course that is delivered by the internet, web-based media, or a combination of these methods:
- (1) Require every student to register for the course by using an individual identification number that shall also be used to verify course participation and completion;
 - (2) Provide a means, such as a bulletin board, e-mail, or call center, for applicants to ask questions regarding the course curriculum.
- (E) A template, model, or sample certificate of completion shall be submitted at application with the training course curriculum for the registrar's review and approval.
- (F) If a certificate is lost or stolen after the completion of the training course, the applicant may obtain a new certificate from the provider that issued the initial certificate.
- (G) A certificate of approval to an authorized course provider shall be subject to renewal biennially. The registrar reserves the right to decline or renew any prospective course provider, or disapprove any authorized course provider, that fails to meet requirements as set forth in this rule or section 4517.05 of the Revised Code.

4501:1-3-03

Sign required to identify place of business.

[\[Comment: For dates and availability of material incorporated by reference in this rule, see rule 4501:1-3-38 of the Administrative Code.\]](#)

(A) No applicant shall be issued a license unless ~~the "Used Motor Vehicle Dealer Application," form "BMV 4320," (January, 2015), or "New Motor Vehicle Dealer Application," form "BMV 4322," (March, 2015), whichever is applicable,~~ there is signage that includes the name of the business as registered with the secretary of state, as applicable, for which the license is sought. ~~The applications are available via the dealer licensing website at [http:// www.ohioautodealers.com](http://www.ohioautodealers.com).~~ Each applicant shall provide evidence of suitable signage that meets the following requirements:

- (1) The sign displays the business name in which the application is made;
- (2) The sign is permanent, properly maintained, and prominently displayed by the entrance of the office, if the sign is not visible from the public roadway;
- (3) The sign's letters identifying the business name are no less than six inches high, unless otherwise approved by the registrar.

(B) No motor vehicle dealer or auction owner or its agent or representative shall alter the physical conditions of the established place of business so that it is not in compliance with the requirements of Chapter 4517. of the Revised Code.

4501:1-3-04

Dealer required to maintain records.

- (A) A motor vehicle dealer, a motor vehicle auction owner and a motor vehicle distributor shall maintain the following records, electronically or by paper, ~~of~~ all the motor vehicles purchased, leased and sold:
- (1) Name and address of the previous owner;
 - (2) Serial number (vehicle identification number);
 - (3) Title number, county and state;
 - (4) Year and make of said vehicle;
 - (5) A purchase agreement for each vehicle sold, which shall include a description of the vehicle, the name and address of the purchaser, the sales price, the odometer reading and may include the dealer's permit number;
 - (6) Lease contracts and security agreements;
 - (7) Odometer disclosure statement for each vehicle;
 - (8) A record of temporary tags sold on each vehicle.
- (B) Records must be held for a period of three years unless otherwise mandated by a federal regulation, ~~maintained and easily accessible for a period of three years by those holding a license granted under Chapter 4517. of the Revised Code and by any person who held a license and has since gone out of business.~~
- (C) Records must be maintained and easily accessible by those holding a license granted under Chapter 4517. of the Revised Code and by any person who held a license and has since gone out of business.
- ~~(E)~~ (D) The business records shall be ~~open~~ available for reasonable inspection by the registrar or his authorized agent within ten business days of the request.

4501:1-3-08

Place of business required for used motor vehicle dealers.

(A) A used motor vehicle dealer shall have an established place of business that meets all of the following requirements:

(1) Has a display lot or display area that:

(a) Is at least three thousand five hundred square feet, not including driveways or office, with adequate ground cover of a hard surface that is free from the collection of dust, mud, water, or other unsightly conditions; or,

(b) For those dealers whose retail sales inventory, as defined in division (G) of section 4517.01 of the Revised Code, is limited at all times to ten vehicles or less, the display area has sufficient space for all vehicles being offered for retail sale. The display area must have adequate ground cover of a hard surface that is free from the collection of dust, mud, water, or other unsightly conditions;

(2) Except as set forth in paragraph (D) (B) and (D) of this rule, is separated with a barrier, as defined in this rule, from any residence and from any other business or service facility that is not primarily related to assisting or furthering the selling, displaying, offering for sale, or dealing in motor vehicles;

A barrier is a fixture or feature of the property that distinguishes the display lot or area from residences or other businesses, comprised of metal, brick, stone, concrete, wood, heavy support cable, landscaping, curbing, or other comparable feature that creates a distinct space for the display lot. It shall clearly delineate a separation between a residence or an unrelated business and the beginning of the dealership's established place of business. Such separation shall be properly maintained during the entire period for which a used motor vehicle dealer's license is held.

(3) Includes a permanent usable structure on the display lot or area that is identifiable as a motor vehicle dealership to the public that includes an easily accessible office of at least one hundred eighty square feet that shall not be used as a storage or other utility area. The office shall include, at minimum, a desk, three chairs, and a filing cabinet, or similar furnishings to create an environment conducive to transacting business, consummating sales, and facilitating the storage of records, all of which shall be kept in a neat and orderly fashion at all times. The office shall include adequate lighting, electrical service, heating and ventilation that is secure and safe for a retail office environment. The entire premises, including any plumbing fixtures, shall not be in violation of any applicable building and zoning requirements.

The dealer shall provide evidence to show building and zoning requirements have been met upon request of the registrar or the registrar's designee. Upon request of the dealer, the registrar of motor vehicles shall consider, and may approve, reasonable variances to these requirements except for variances to the building and zoning requirements;

- (4) Has a business telephone in service at all times that shall be answered and identified exclusively for the dealership's business. The business telephone number shall be legible and posted in a conspicuous place in public view. A motor vehicle dealer shall notify the registrar in writing within fifteen days of any change in the business telephone number;
- (5) Is open during the posted business hours. The business hours shall be legible and posted in a conspicuous place near the entrance of the office. A motor vehicle dealer shall notify the registrar in writing within fifteen days of any change in the posted business hours;
- (6) Is staffed by a ~~sole proprietor, partner, president of a corporation, member of a limited liability company, trustee of a business trust, or an equivalent natural person affiliated with some other kind of legally constituted business organization~~ a sole proprietor, officer of a corporation, trustee of a business trust, or in the case of a partnership or limited liability company, partner or member, or any such entity as defined in division (A) of section 4517.01 of the Revised Code, or a licensed motor vehicle salesperson under sections 4517.09, 4517.14, and 4517.20 of the Revised Code if the employee engages in the business and could reasonably assist any retail customer.

(B) A physical barrier between the dealership and service facility, is not required at an established place of business that includes a service facility that is used to perform service on motor vehicles, if the established place of business meets the following requirements:

- (1) The service facility is owned and operated by each person listed on the dealer license as a sole proprietor, officer(s) of a corporation, trustee(s) of a business trust, or in the case of a partnership or limited liability company, partner(s) or member(s), or any such entity as defined in division (A) of section 4517.01 of the Revised Code;
- (2) The display lot or area shall have distinguished areas, identified through signage, for motor vehicles that are being repaired, motor vehicles that are being offered for sale, and customer parking;
- (3) Notwithstanding the requirement of division (A)(3) of this rule, a private office shall be available that is conducive to transacting business in a confidential manner regarding the sale of a motor vehicle; and

(4) Is staffed by a sole proprietor, officer of a corporation, trustee of a business trust, or in the case of a partnership or limited liability company, partner or member, or any such entity as defined in division (A) of section 4517.01 of the Revised Code, or a licensed motor vehicle salesperson under sections 4517.09, 4517.14, and 4517.20 of the Revised Code if the employee engages in the business and could reasonably assist any retail customer.

~~(B)~~(C) No motor vehicle dealer, its agent, or its representative shall alter the physical conditions of the established place of business so that it is not in compliance with the requirements of Chapter 4517. of the Revised Code.

~~(C) A barrier is a fixture or feature of the property that distinguishes the display lot or area from residences or other businesses, comprised of metal, brick, stone, concrete, wood, heavy support cable, landscaping, curbing, or other comparable feature that creates a distinct space for the display lot. It shall clearly delineate a separation between a residence or an unrelated business and the beginning of the dealership's established place of business. Such separation shall be properly maintained during the entire period for which a used motor vehicle dealer's license is held.~~

(D) A dealer may make a written request to the registrar for an exception to the barrier requirements as follows:

- (1) The dealer shall present a plan to clearly identify, distinguish and segregate through signage or other measures any vehicles the dealer is offering for sale from any other vehicles that may be present on the premises at any time;
- (2) The registrar shall review the plan. If the registrar determines that there is no reasonable health or safety threat to customers, neighbors, or neighboring businesses; that the dealer acted in good faith in buying or leasing the property; and that the dealer has made a reasonable effort to comply with the barrier requirements, but that restrictions imposed by local zoning ordinances or by the lessor prohibit the establishment of a barrier, the registrar, in the registrar's discretion, may approve the plan, approve the plan with modifications, or disapprove the plan.

(E) In the event that a used motor vehicle dealer's license is sought by an applicant that surrenders a new motor vehicle dealer's license, and specific circumstances prevent the location previously used for operation of the new motor vehicle dealership from meeting all of the requirements of section 4517.03 of the Revised Code and this rule, the registrar may exercise discretion to grant a used motor vehicle dealer's license at said location despite the defect.

4501:1-3-10

Requirements for expanded display site for motor vehicle dealer, motor vehicle leasing dealer, or motor vehicle auction owner.

- (A) A motor vehicle dealer, motor vehicle leasing dealer, or motor vehicle auction owner, pursuant to section 4517.01 of the Revised Code may expand the display area of the dealership location licensed under Chapter 4517. of the Revised Code. The expanded area is an extension of the principally established place of business pursuant to section 4517.03 of the Revised Code which is located adjacent to or within two hundred feet of the property line of the principally established place of business and which complies with the following:
- (1) The expanded site shall be at least two thousand square feet not including driveway with adequate ground cover of hard surface so as to prevent the collection of dust, mud, water or other unsightly conditions.
 - (2) The expanded site shall be used exclusively for the display of motor vehicles and no other business or residence shall be located or conducted on the site.
 - (3) There shall be a sign at the expanded site which shall be in accordance with rule 4501:1-3-03 of the Administrative Code.
- (B) In addition to the above conditions, the motor vehicle dealer shall conduct all transactions relating to the lease or sale of motor vehicles at the principal place of business. A motor vehicle dealer who has more than one place of business in a county, must operate the expanded display site in conjunction with the principally established place of business.
- (C) Any motor vehicle dealer seeking to establish an expanded display site shall first request approval from the registrar of motor vehicles and request an inspection to determine if the site meets the criteria set forth above. If the registrar determines that the site meets the requirements of this rule, the motor vehicle dealer shall not be required to obtain a separate license for the expanded display site nor will the motor vehicle dealer be required to maintain a display or repair facility under roof on the expanded site. If the registrar determines that the expanded display site does not continue to meet the above criteria annually thereafter, the dealers annual license renewal shall be denied pursuant to section 4517.12 of the Revised Code. An appeal of such a denial may be made to the motor vehicle dealers board in accordance with rule 4501:1-3-25 of the Administrative Code. If the motor vehicle dealers board, upon its own investigation, determines that the site does not meet or is not in accordance with the requirements set forth above, the board ~~shall~~ may suspend or revoke the dealer's license pursuant to section 4517.33 of the Revised Code.

4501:1-3-21

Evidence.

- (A) In all hearings before the board, the introduction of evidence shall be governed in general by the [Ohio](#) rules of evidence.
- (B) The board may call the license holder to testify under oath as upon cross-examination. The license holder may call the acting secretary of the board to testify under oath as upon cross-examination.

4501:1-3-24

Rehearings.

- (A) Should the license holder desire a rehearing before the board, such license holder shall file ~~his application~~ for rehearing in writing with the secretary or acting secretary of the board, within fifteen days after receipt of the decision of the board and shall accompany the application with a verified statement setting out the grounds on which such rehearing is sought.
- (B) Grounds for rehearing shall be for the following causes only:
- (1) For mistake, neglect or omission on the part of the board, or irregularity in obtaining a favorable decision or order on the part of the successful party.
 - (2) For fraud practiced by the successful party in obtaining a favorable order or decision.
 - (3) For unavoidable casualty or misfortune, preventing the license holder from prosecuting his case before the board.
 - (4) When a decision or order was obtained, in whole or a material part by false testimony on the part of the successful party, or any witness ~~in his~~ on the license holders behalf, which ordinary prudence could not have anticipated or guarded against.
 - (5) Newly discovered evidence, material for the license holder applying for rehearing, which with reasonable diligence could not have been discovered and produced at the hearing and which is not merely corroborative of evidence produced or offered at the hearing, and the license holder in ~~his application~~ the request for rehearing shall state the nature of such evidence.

4501:1-3-25

Appeals from registrar's order.

- (A) When the registrar refuses to issue, renew, or transfer any license, ~~he~~ the registrar shall, by certified mail, return receipt requested, send to the applicant so refused, notice of such order at the address stated in the application and certify ~~his~~ the findings and final order to the board. The notice to the applicant shall set forth the reasons for the registrar's action, refer to the statute or rule directly involved, and state that the applicant has a period of thirty days from the time of mailing of the notice, to file his appeal with the board.
- (B) Such appeal must be by petition, in writing, and verified under oath by the appellant. The petition in appeal must set forth the reason for such appeal and the reason why the order of the registrar is in error. The original and at least one copy shall be filed with the secretary or acting secretary of the board.
- (C) After receipt of such petition in appeal, the secretary or acting secretary of the board shall, by certified mail, return receipt requested, immediately send a notice of hearing to the appellant. The notice of hearing shall contain the date, time, and place of hearing of the appeal. The date set for such hearing shall be within seven to fifteen days after the party has requested a hearing unless otherwise agreed to by both the board and the party. The board may postpone or continue any adjudication hearing upon the motion of any party or upon its own motion.
- (D) The provisions of rules 4501:1-3-16, 4501:1-3-19, 4501:1-3-20, 4501:1-3-21, ~~4501:1-3-22~~, and 4501:1-3-23 of the Administrative Code shall apply to hearings on appeals from the registrar's order in the same manner as regular hearings before the board.

4501:1-3-30

Licensing of leasing employees.

An employee of a motor vehicle leasing dealer other than a ~~sole proprietor, president of a corporation, partner, trustee of a trust, member of a limited liability company, or an equivalent natural person affiliated with some other kind of a legally constituted business organization~~ sole proprietor, officer of a corporation, trustee of a business trust, or in the case of a partnership or limited liability company, partner or member, or any such entity as defined in division (A) of section 4517.01 of the Revised Code, shall be licensed as a motor vehicle salesperson under sections 4517.09, 4517.14 and 4517.20 of the Revised Code if the employee engages in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle for personal, family, or household use pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for a term of thirty days or more where title to the motor vehicle is in a person other than the user.

4501:1-3-32

Place of business required for motor vehicle leasing dealers.

A motor vehicle leasing dealer who makes motor vehicles available for personal, family, or household use by another in the manner described in the definition of "motor vehicle leasing dealer" contained in section 4517.01 of the Revised Code shall have an easily recognizable established place of business and meet all of the following requirements:

- (A) Is separated with a ~~permanent physical~~ barrier, as defined in rule 4501:1-3-08 of the Administrative Code, from any residence and any other business that is not primarily related to leasing motor vehicles to any person desiring to lease a motor vehicle for personal, family, or household use, with the exception of the business operated as a new motor vehicle dealership, a used motor vehicle dealership, or a motor vehicle renting dealership, as defined in section 4549.65 of the Revised Code, located at the place of business;

- (B) Has an office that is clearly identified, easily accessible, ~~and no less than one hundred eighty square feet and shall include, at minimum, a desk, three chairs, and a filing cabinet, all of which shall be kept in a neat and orderly fashion at all times; electric lighting; and heating that is of a permanent nature and that is secure and safe for a retail office environment; and at least one hundred eighty square feet that shall not be used as a storage or other utility area. The office shall include, at minimum, a desk, three chairs, and a filing cabinet, or similar furnishings to create an environment conducive to transacting business, consummating sales, and facilitating the storage of records, all of which shall be kept in a neat and orderly fashion at all times. The office shall include adequate lighting, electrical service, heating and ventilation that is secure and safe for a retail office environment. The entire premises, including any plumbing fixtures, shall not be in violation of any applicable building and zoning requirements. The dealer shall provide evidence to show building and zoning requirements have been met upon request of the registrar or the registrar's designee. Upon request of the dealer, the registrar of motor vehicles shall consider, and may approve, reasonable variances to these requirements except for variances to the building and zoning requirements;~~ and at least one hundred eighty square feet that shall not be used as a storage or other utility area. The office shall include, at minimum, a desk, three chairs, and a filing cabinet, or similar furnishings to create an environment conducive to transacting business, consummating sales, and facilitating the storage of records, all of which shall be kept in a neat and orderly fashion at all times. The office shall include adequate lighting, electrical service, heating and ventilation that is secure and safe for a retail office environment. The entire premises, including any plumbing fixtures, shall not be in violation of any applicable building and zoning requirements. The dealer shall provide evidence to show building and zoning requirements have been met upon request of the registrar or the registrar's designee. Upon request of the dealer, the registrar of motor vehicles shall consider, and may approve, reasonable variances to these requirements except for variances to the building and zoning requirements;

- (C) Has a business telephone in service at all times that shall be answered in the name of the lending dealer. The business telephone number shall be legible and posted in a conspicuous place in public view. A motor vehicle leasing dealer shall notify the registrar in writing within fifteen days of any change in the business telephone number;

- (D) Has a sign that displays the business name in which the application is made, is permanent, properly maintained, and prominently displayed by the entrance of the office, if the sign is not visible from the public roadway. The sign's letters identifying the business name shall be no less than six inches high;

- (E) Maintain at all times the capability to send and receive electronic documents;

- (F) Is open during the posted business hours. The business hours shall be legible and posted in a conspicuous place near the entrance of the office. A motor vehicle leasing dealer shall notify the registrar in writing within fifteen days of any change in the posted business hours;
- (G) Is staffed by a ~~sole proprietor, partner, president of a corporation, member of a limited liability company, trustee of a business trust, an equivalent natural person affiliated with some other kind of legally constituted business organization,~~ sole proprietor, officer of a corporation, trustee of a business trust, or in the case of a partnership or limited liability company, partner or member, or any such entity as defined in division (A) of section 4517.01 of the Revised Code, or a licensed salesperson.

4501:1-3-33

Place of business required for a motor vehicle auction owner.

- (A) A motor vehicle auction owner shall have an established place of business that meets all of the following requirements:
- (1) Is separated with a ~~permanent physical~~ barrier, as defined in rule 4501:1-3-08 of the Administrative Code, from any residence, motor vehicle dealership, salvage motor vehicle dealership, salvage motor vehicle auction, or salvage motor vehicle pool;
 - (2) Has at least one area under permanent roof that is large enough that motor vehicles may be moved through where such motor vehicles may be offered at auction;
 - (3) Has an office area that is easily accessible, permanent, and shall include, at minimum, ~~electric lighting, and heating that is of a permanent nature and that is secure and safe for a retail office environment;~~ adequate lighting, electrical service, heating and ventilation that is secure and safe for a retail office environment. The entire premises, including any plumbing fixtures, shall not be in violation of any applicable building and zoning requirements. The dealer shall provide evidence to show building and zoning requirements have been met upon request of the registrar or the registrar's designee.
 - (4) Has an office and auction area that shall be kept neat and orderly at all times that shall not be used as a storage or utility area;
 - (5) Has a business telephone in service at all times that shall be answered and identified exclusively for the auction's business. The business telephone number shall be legibly posted in a conspicuous place in public view. A motor vehicle auction owner shall notify the registrar in writing within fifteen days of any change in the business telephone number;
 - (6) Has an auction area that is open during the posted business hours. The business hours shall be legible and posted in a conspicuous place near the entrance of the business. A motor vehicle auction owner shall notify the registrar in writing within fifteen days of any change in the posted business hours.
- (B) Notwithstanding section 4517.21 of the Revised Code, auction facilities may be used to conduct a public auction of repossessed motor vehicles and a motor vehicle dealer auction simultaneously. All inventories shall be maintained and separated at all times.
- (C) Any person in attendance for a public auction of repossessed motor vehicles shall be

separately identified and prohibited from participating in a motor vehicle dealer auction.

- (D) Every auction owner licensed under Chapter 4517. of the Revised Code shall notify the registrar of motor vehicles in writing within fifteen days of any change in status of the business name or location, or change in status of sole proprietor, partner, president of a corporation, member of a limited liability company, trustee of a business trust, or an equivalent natural person affiliated with some other kind of legally constituted business organization.

4501:1-3-35

Notice of meetings.

- (A) Any person may obtain information regarding the time and location of all regularly scheduled meetings and information regarding the time, location, and purpose of any special meetings of the board, its subcommittees, and special committees. Requests for notice of meetings may be submitted to the secretary of the motor vehicle dealers board in written form, or may be made in person during regular business hours. Notice of all regularly scheduled board meetings will be placed on the dealer licensing ~~section of the bureau of motor vehicle's~~ website no less than fifteen days before a regularly scheduled meeting. The website is available at <http://www.ohioautodealers.com>.
- (B) Written requests for notice of meetings may be general in nature or may be specific to meetings where a particular type of business will be considered. Such requests shall include the name of the person submitting the request, any organization with which the requester is affiliated, mailing address, telephone number, and whether notice is sought for all or specified types of meetings. ~~Notice requests submitted pursuant to this paragraph shall include:~~
- ~~(1) Fifteen self-addressed envelopes with appropriate postage affixed; or~~
 - ~~(2) The requestor shall be charged a reasonable fee for the costs of copying and mailing.~~
- (C) The board shall provide twenty-four hour advance notice of special meetings of the board, subcommittees; and special committees to representatives of news organizations who have submitted written requests for such notice to the secretary of the motor vehicle dealers board. In the event that an emergency meeting is scheduled and twenty-four hour notice is not possible, the board shall notify those representatives of news organizations who have requested notice in accordance with this paragraph, as soon as is reasonably possible after such meeting is scheduled. The notice requested by representatives of news organizations pursuant to this rule may be general or specific in nature.

4501:1-3-36

Construction equipment auction license.

[\[Comment: For dates and availability of material incorporated by reference in this rule, see rule 4501:1-3-38 of the Administrative Code.\]](#)

(A) Each person applying for a construction equipment auction license shall submit an "Application for Construction Equipment Auction License," ~~form "BMV-4324," (April, 2013),~~ hereinafter referred to as "application," to the registrar of motor vehicles, ~~available via the "Ohio Bureau of Motor Vehicles, Dealer Licensing Section" website at <http://www.OhioAutoDealers.com>.~~ The application shall be signed and sworn to by the applicant and shall include the following information:

- (1) The name or names under which the business will be conducted;
- (2) The business address, telephone number, fax number, and email address;
- (3) The form of business under which the business is organized;
- (4) The vendor number of the business;
- (5) The business's federal tax identification number;
- (6) Information identifying the principals including name, address, and social security number or tax identification number as follows:
 - (a) For a sole proprietorship, the proprietor;
 - (b) For a partnership, the partners;
 - (c) For a corporation, the president, vice president, secretary, and treasurer of the corporation;
 - (d) For a trust, the trustees;
 - (e) For a limited liability company, all members owning more than ten percent of the company;
 - (f) For any other form of organization, the directors or other appropriate principals of the organization as designated by the registrar.
- (7) Any other information determined by the registrar to be relevant to the application.

- (B) Each principal of the business who is an individual and a resident of Ohio shall submit a background check obtained through the bureau of criminal identification and investigation. Each principal of the business who is an individual but is not a resident of Ohio, shall submit a "Civilian Identification Fingerprint Card," ~~form "BIM-12-98," (December, 1998);~~ for the purpose of obtaining a background check through the office of the bureau of criminal identification and investigation. Fingerprint cards are available upon written request to: "Ohio Bureau of Motor Vehicles, Dealer Licensing Section, P.O. Box 16521, Columbus, Ohio 43216-6521." ~~The application prescribed by the registrar shall contain instructions on how to comply with these requirements.~~
- (C) ~~The application shall contain affirmations stating that the applicant~~ The applicant shall affirm all the following requirements:
- (1) Is engaged primarily in the business of selling large construction and transportation equipment at auction;
 - (2) Receives more than one million dollars in gross annual sales in Ohio, and derives not more than ten percent of the its gross annual sales revenue in Ohio from the sale of motor vehicles having a gross vehicle weight rating of ten thousand pounds or less;
 - (3) Maintains a permanent auction site within Ohio that is at least ninety acres in size and maintains over sixty thousand square feet of total facility space;
 - (4) Will comply with sections 4517.17 and 4517.18 of the Revised Code;
 - (5) With respect to motor vehicles having a gross vehicle weight rating of ten thousand pounds or less, will comply with all applicable provisions of Chapter 4505. of the Revised Code concerning the titling of such vehicles, Chapter 5739. of the Revised Code concerning the the withholding and payment of sales taxes in connection with the sale such motor vehicles, and Chapter 5751. of the Revised Code concerning the payment of commercial activity taxes on the sale of such motor vehicles in the same manner as a motor vehicle dealer, including transferring title to such vehicles to the licensee's name prior to auction.
- (D) The application, shall contain questions requiring the applicant to state whether the business or any of the principals of the business have previously applied for an Ohio new or used motor vehicle dealer's license, leasing license, auction owner's license, motor vehicle salvage license, motor vehicle auction license, motor vehicle salvage pool license, or motor vehicle salesperson's license; whether the business or

any of the principals of the business currently holds any such license; and whether any such license has ever been suspended or revoked. The applicant shall also provide information regarding any such applications, licenses, suspensions, and revocations.

- (E) The application shall contain questions requiring the applicant to state whether the business or any of the principals of the business have ever been convicted of any fraudulent act in connection with selling or otherwise dealing in auctions, motor vehicles, or equipment. The registrar may require the applicant to provide additional information regarding any such conviction.
- (F) The application shall be signed by a principal or authorized agent of the business and shall be notarized.
- (G) The registrar shall determine whether the business is eligible for a construction equipment auction license and if the application should be approved. If so, the registrar shall issue the license. If the registrar determines that the license should not be issued, the registrar shall either require additional information or deny the license.

~~(H) If a construction equipment auction license is issued, the licensee shall comply with the requirements of sections 4517.17 and 4517.18 of the Revised Code.~~

~~(H)~~(H) The registrar shall prescribe a "Construction Equipment Auction License Annual Report," ~~form "BMV 4313," (October, 2012);~~ hereinafter referred to as "annual report," ~~available via the "Ohio Bureau of Motor Vehicles, Dealer Licensing Section" website at <http://www.OhioAutoDealers.com>.~~ The licensed construction equipment auction shall certify the following information:

- (1) The gross proceeds generated from auctions held at the auction site during the prior calendar year;
- (2) The gross proceeds generated from the sale of motor vehicles having a gross vehicle weight of ten thousand pounds or less during the prior calendar year;
- (3) Any other information reasonably prescribed by the registrar.

~~(I)~~(I) Each licensed construction equipment auction shall file with the bureau of motor vehicles the annual report specified in paragraph (I) of this rule no later than the thirtieth day of April in the following calendar year. Failure to timely file the annual report may be grounds for the suspension of the auction's license until the annual report is filed.

~~(K)~~(J) The registrar shall deny the application of any business for a construction equipment auction license or may revoke a license previously issued if the registrar finds that the business is in violation of any provisions of section 4517.171 of the Revised Code.

~~(K)~~(K) Any business which has been denied a license or has had a license revoked by the registrar may appeal from the action of the registrar to the motor vehicle dealers board in the manner provided in section 4517.33 of the Revised Code.

4501:1-3-07

Criminal history record required with application.

[Comment: For dates and availability of material incorporated by reference in this rule, see rule 4501:1-3-38 of the Administrative Code.]

(A) A criminal history record, that is checked on a state-wide basis through the bureau of criminal identification and investigation shall be submitted with an application for any license granted under Chapter 4517. of the Revised Code. A criminal history record is also required if the applicant has not held a license or has not previously submitted a criminal history record within twelve months prior to the application . Each person listed on the application as a sole proprietor, officer(s) of a corporation, trustee(s) of a business trust, or in the case of a partnership or limited liability company, partner(s) or member(s), or any such entity as defined in division (A) of section 4517.01 of the Revised Code, shall also submit results of a criminal history record, checked on a state-wide basis through the bureau of criminal identification and investigation, with the application.

(B) Each applicant for a dealer's, distributor's, auction owner's, or construction equipment auction license, shall disclose if the applicant has been convicted of, pleaded guilty, or pleaded no contest, in a criminal action, or has been guilty of a fraudulent act as defined in rule 4501:1-3-09 of the Administrative Code, or had a judgment rendered against the applicant in a civil action. Each applicant shall indicate all of the offenses committed in this state, another state, or jurisdiction for which the person has been convicted and shall be responsible for providing all the following documents or its equivalent:

(1) A certified copy of a conviction or journal entry;

(2) A certified copy of the sentencing entry; and

(3) A certified copy of the indictment or complaint.

(C) Each applicant for a salesperson's license, shall disclose if the applicant has been convicted of, or pleaded guilty to, in a criminal action, or has been guilty of a fraudulent act as defined in rule 4501:1-3-09 of the Administrative Code or had a judgment rendered against the applicant in a civil action. Each applicant shall indicate all of the offenses committed in this state, another state, or jurisdiction for which the person has been convicted and shall be responsible for providing all the following documents or its equivalent:

(1) A certified copy of a conviction or journal entry;

(2) A certified copy of the sentencing entry; and

(3) A certified copy of the indictment or complaint.

(D) All officers of a corporation, trustees of a business trust, or in the case of a partnership or limited liability company, partners or members, or any such entity as

defined in division (A) of section 4517.01 of the Revised Code, listed on a "Motor Vehicle Dealer Application For Change Of Officer," submitted pursuant to section 4517.23 of the Revised Code, that currently holds a license, has not held a license, or has not previously submitted a criminal history record within twelve months prior to the application, shall submit with the application results of a criminal history record, that is checked on a state-wide basis through the bureau of criminal identification and investigation.

4501:1-3-09

The denial, suspension, or revocation of a license.

[Comment: For dates and availability of material incorporated by reference in this rule, see rule 4501:1-3-38 of the Administrative Code.]

(A) The registrar shall deny the application of any person for a license that is granted under Chapter 4517. of the Revised Code that has been convicted of a fraudulent act in connection with selling or otherwise dealing in motor vehicles. Fraudulent acts shall include, but are not limited to the following:

(1) Theft of a motor vehicle as set forth in section 2913.02 of the Revised Code;

(2) Forgery as set forth in section 2913.31 of the Revised Code;

(3) Identity fraud as set forth in section 2913.49 of the Revised Code;

(4) Falsification as set forth in section 2921.13 of the Revised Code;

(5) Receiving stolen property as set forth in section 2913.51 of the Revised Code;

(6) Concealing or destroying the identity of a motor vehicle as set forth in section 4549.62 of the Revised Code;

(7) Tampering with an odometer as set forth in section 4549.42 of the Revised Code;

(8) Prohibited acts that involve certificate of title for motor vehicles as set forth in section 4505.19 of the Revised Code;

(9) Tampering with records as set forth in section 2913.42 of the Revised Code;

(10) Extortion as set forth in section 2905.11 of the Revised Code;

(11) Coercion as set forth in section 2905.12 of the Revised Code;

(12) Passing bad checks as set forth in section 2913.11 of the Revised Code.

(B) As set forth in section 4517.33 of the Revised Code, the board may suspend or revoke any license for violations of Chapter 4517. of the Revised Code and Chapter 4501:1-3. of the Administrative Code.

4501:1-3-11

Net worth and bond.

(A) No person as defined in division (A) of section 4517.01 of the Revised Code shall be issued a motor vehicle dealer's license or be permitted to operate under such license unless the person has a net worth, verifiable upon request by the registrar, in the sum of at least seventy-five thousand dollars.

(B) The net worth of any person shall be equal to that person's assets less liabilities.

(1) The term "assets" shall include all money, receivables, prepaid items, and other property, be it real or personal, tangible or intangible;

(2) The term "liabilities" shall include all obligations, short term and long term, for which the person is responsible.

(C) Each application for a used motor vehicle dealer licensed under Chapter 4517. of the Revised Code, effective January 1, 2018, shall post with the attorney general's office in favor of this state a bond of a surety company authorized to do business in this state, in an amount of not less than twenty-five thousand dollars. The surety bond is used solely for the purpose of replenishing funds that have been dispersed to compensate retail purchasers of motor vehicles, as pursuant to section 4505.181 of the Revised Code.

(D) Each surety bond shall include the following:

(1) The business name on the bond must correspond exactly with the business name on file with the bureau of motor vehicles and the secretary of state, as applicable;

(2) A copy of the bond must accompany the application before a license is issued;

(3) The bond shall not be canceled by a surety company with less than thirty days notice in writing to the registrar. If a bond is canceled and the licensee fails to file a new bond with the bureau of motor vehicles in the required amount on or before the bond's effective date of cancellation, the licensee shall appear before the motor vehicle dealers board for failure to comply with Chapter 4517. of the Revised Code and Chapter 4501:1-3 of the Administrative Code;

(4) The bond shall be maintained during the entire period for which a used motor vehicle dealer's license is held;

(5) The licensee shall notify the registrar and the surety company within fifteen days of any change in information that is contained in the application for the surety bond.

(E) Notwithstanding the requirement of division (C) of this rule, no surety bond is required if, a used motor vehicle dealer, or any sole proprietor, officer of a corporation, trustee of a business trust, or in the case of a partnership or limited

liability company, partner or member that currently holds or has held a new motor vehicle dealers license, used motor vehicle dealers license or a leasing dealers license within a period of one year immediately preceding the date of application and the previous license was not suspended, revoked, or found in violation of section 4505.181 of the Revised Code.

4501:1-3-20

Hearing procedure.

Unless otherwise directed by the board, the procedure for hearings before the board shall be as follows:

(A) The attorney general shall concisely state the action or proposed action to be taken by the registrar of motor vehicles in said case.

(B) The licensee, or the licensee's attorney, may briefly state the licensee's case, and briefly state facts, laws, and rules relied upon.

(C) The attorney general shall have the duty to proceed forth with the registrar's case.

(D) The licensee or licensee's attorney shall present the licensee's case and may offer supporting evidence of facts, laws, and rules.

(E) The attorney general may offer evidence with facts, laws, and rules in rebuttal.

(F) The board may in its discretion allow arguments.

(G) The board may in its discretion request or permit the filing of all presented supporting evidence.

*** DRAFT - NOT YET FILED ***

4501:1-3-22

Filing of protest cases.

Protest case filings as pursuant to Chapter 4517. of the Revised Code, shall be clearly typewritten or photocopied. The party filing the protest shall furnish the opposite party or their attorney with a copy, in such a format as agreed upon by both parties. The secretary of board or acting secretary of the board shall be furnished with an original and one paper copy of the filing.

4501:1-3-23

Decision of the board.

(A) After submission of the case to the board, the board may retire and deliberate immediately or take the case under advisement.

(B) Any applicant or licensee found by the board to be in violation of Chapter 4517. of the Revised Code or Chapter 4501:1-3 of the Administrative Code shall be issued one of the following:

(1) A revocation of the license;

(2) A suspension with a defined time period;

(3) A verbal warning; or

(4) A licensed used motor vehicle dealer, notwithstanding the requirements of section 4517.05 of the Revised Code, may be required to complete the used motor vehicle dealer training course.

(C) The decision of the board shall be written and a copy of such decision shall be mailed to the license holder by certified mail, return receipt requested, and a copy mailed to the attorney for the license holder, if any. A copy also shall be forwarded to the attorney general.

*** DRAFT - NOT YET FILED ***

4501:1-3-05

Dealer selling as a salesperson for another dealer prohibited.

~~(A) No person, firm, or corporation, to which a dealer's license has been currently issued, shall be issued a salesperson's license to sell motor vehicles for another licensed dealer.~~

4501:1-3-06

Military provisions related to processing motor vehicle dealer applications.

(A) For the purpose of this rule, the following shall apply:

- (1) "Active duty" means active duty pursuant to an executive order of the president of the United States, an act of congress of the United States, or section 5919.29 or 5923.21 of the Revised Code.
- (2) "Armed forces" shall have the same meaning as in section 5903.01 of the Revised Code.
- (3) "Veteran" shall have the same meaning as in section 5903.01 of the Revised Code.

(B) The bureau shall track, monitor, prioritize and expedite each application for a license issued under Chapter 4517. of the Revised Code, from an applicant who is a:

- (1) Veteran;
- (2) Member of the armed forces;
- (3) Spouse of a veteran or member of the armed forces; or
- (4) Surviving spouse of a veteran or member of the armed forces.

(C) Satisfactory evidence that the applicant is a veteran or member of the armed forces for the purpose of determining whether an applicant qualifies for an accommodation under Chapter 5903. of the Revised Code includes the applicant's official military identification card, official DD-214 separation document, or other official military documentation approved by the board. A marriage certificate may be required, in addition to evidence of the spouse's status as a veteran or member of the armed forces, if the applicant is a spouse or surviving spouse of a veteran or member of the armed forces.

(D) In order to expedite the processing of complete applications, especially for individuals facing imminent deployment, the bureau shall accept necessary information in support of the application by electronic and other appropriate means.

4501:1-3-12

Administrative penalties.

In accordance with section 4517.22 of the Revised Code, and pursuant to an adjudication hearing conducted in accordance with Chapter 119. of the Revised Code, the board may order a person to pay an administrative penalty for any violation of sections 4517.22 or 4517.221 of the Revised Code. The amount of any such administrative penalty assessed for the first violation shall be not more than five hundred dollars and shall be not more than one thousand dollars for each subsequent violation thereafter.

4501:1-3-13

Method of instituting complaints.

- (A) The board may, upon its own motion, investigate any license holder for alleged violations of law or of the rules of this board. If such investigation discloses any such violations, such license holder shall be informed that reasonable grounds for suspension or revocation of the license exist.

- (B) The board shall, upon verified written complaint of any person filed with the secretary or acting secretary of the board, investigate as to the matters complained of, and if such investigation develops any apparent violation of the laws or of the rules of this board, such license holder shall be informed that reasonable grounds for suspension or revocation of the license exist.

4501:1-3-14

Notice of hearing.

When in the opinion of the board, reasonable grounds for issuance of a citation exist, the secretary or acting secretary of the board shall send a "Notice of Opportunity for Hearing" by certified mail, return receipt requested, to the license holder cited at the address specified in the application for license. Such notice shall specify the alleged violation of the Revised Code or the rules of the board, and shall apprise the licensee of his/her right to request an adjudicatory hearing on the matter.

4501:1-3-15

Date and place of hearing.

If requested by the license holder in writing, within thirty days after mailing of the "Notice of Opportunity for Hearing", the board must set the date, time and place of hearing, and immediately notify the license holder. The date for such hearing shall be within seven to fifteen days after the party has requested a hearing. If the license holder fails to respond to "Notice of Opportunity for Hearing" within thirty days, the board may consider the charges as proven and may, in its discretion and without a hearing, suspend or revoke the license.

4501:1-3-16

Continuances.

- (A) Any hearing may be postponed or continued by the board on its own motion, or within the discretion of the board at the request of the license holder for such period of time and upon such terms as the board may prescribe.

- (B) The license holder requesting continuances shall submit to the board, at least five days prior to the date set for the hearing, a written request, stating the reasons for the desired continuance. Verified statements setting out the grounds for the continuance shall be filed with the request.

4501:1-3-19

Stenographer's record.

- (A) At any hearing before the board, the record of which may be the basis of an appeal to a court, a stenographic record of the testimony and other evidence submitted shall be taken at the expense of the board.

*** DRAFT - NOT YET FILED ***

4501:1-3-26

Docket.

- (A) The secretary or acting secretary of the board shall keep a docket and enter into such docket all cases before the board. Said docket shall be open to public inspection.

*** DRAFT - NOT YET FILED ***

4501:1-3-31

Exemption from notice of change.

Motor vehicle dealers shall be exempt from the provisions of division (A) of section 4517.23 of the Revised Code, requiring dealers to notify the registrar of changes in the status of personnel of owners, partners, officers and/or directors, if stock in the dealer or its parent company has been traded publicly and public records with state and federal agencies document such change.

4501:1-3-34

Notice of public hearing regarding adoption, amendment, or rescission of a rule.

- (A) A public notice issued by the motor vehicle dealers board of a hearing to consider adopting, amending or rescinding a rule which the board is authorized by law to do, shall be published in accordance with the requirements of section 119.03 of the Revised Code. Notice shall be published at least once in the register of Ohio, in the English language, at least thirty days prior to the date set for a public hearing.

- (B) The motor vehicle dealers board shall be authorized to give additional notice of such public hearing as it deems necessary; however, the giving of such additional notice shall not be mandatory, and failure to give notice by any means other than as specified in paragraph (A) of this rule shall not in any way invalidate any action which may be taken by the motor vehicle dealers board.

- (C) The public notice shall specify the date, time and place of any hearing relative to the proposed rule change and shall include:
 - (1) A statement of the motor vehicle dealers board intention to consider adopting, amending or rescinding a rule and the purpose or reason therefore;

 - (2) A summary of the proposed rule, amendment or rescission or a general statement as to the subject to which it relates.

4501:1-3-37

Construction equipment auction required to maintain records.

- (A) A construction equipment auction shall maintain the following records covering the purchase and sale of all motor vehicles having a gross vehicle weight rating of ten thousand pounds or less:
- (1) The year and make of the motor vehicle;
 - (2) The vehicle identification number (VIN);
 - (3) The name and address of the previous owner;
 - (4) The title number and the county and state of issuance of the previous title;
 - (5) The odometer reading at the time of purchase;
 - (6) The name and address of the purchaser, the sales price, and the odometer reading at the time of sale;
 - (7) The odometer disclosure statement;
 - (8) A record of any temporary tag sold for each motor vehicle.
- (B) A construction equipment auction shall maintain financial records sufficient to demonstrate that the business receives more than one million dollars in gross annual sales in Ohio and derives not more than ten per cent of its gross annual sales revenue in Ohio from the sale of motor vehicles having a gross vehicle weight rating of ten thousand pounds or less.
- (C) The business records of a construction equipment auction licensee shall be maintained in an easily accessible manner and shall be open for reasonable inspection by the registrar of motor vehicles or the registrar's authorized agents for a period of not less than three years from the date of the transaction or the date of the creation of the record, whichever is later.
- (D) The construction equipment auction facility shall be open to inspection by the registrar or the registrar's authorized agents at all reasonable times prior to the issuance to any license and during the term of any such license.

4501:1-3-17

Consent agreements.

- (A) Any motor vehicle dealer, motor vehicle leasing dealer, motor vehicle auction owner, construction equipment auction owner, or motor vehicle distributor, hereinafter referred to as "licensee", who has been notified by the secretary of the board of a hearing to be held pursuant to Chapter 119. of the Revised Code for violations of Chapter 4517. of the Revised Code and Chapter 4501:1-3 of the Administrative Code may enter into a consent agreement with the board.
- (B) A consent agreement shall be in writing and shall be submitted for authorization to the board. The board shall accept, modify or reject said agreement.
- (C) No modifications to such an agreement may become a final order without the agreement and consent of the licensee. If the board rejects the proposed consent agreement terms, or it modifies the consent agreement terms and the modification is not agreed to by the licensee, therein after, the right to an administrative hearing and full due process pursuant to Chapter 119. of the Revised Code shall be granted.
- (D) A consent agreement shall not be effective until the agreement is authorized by the board and signed by the licensee, licensee's legal counsel, if applicable, and the president of the board.
- (E) A consent agreement authorized by the board and signed by all parties pursuant to paragraph (D) of this rule, relinquishes the licensee's privilege to an administrative hearing and any appeal or right of consideration in the matter pursuant to Chapters 119. and 4517. of the Revised Code.

4501:1-3-38

Materials incorporated by reference.

[Comment: For dates and availability of material incorporated by reference in this chapter, see paragraph (A) of this rule.]

(A) Incorporated by reference. This chapter includes material that has been incorporated by reference. If the material is subject to change, only the specific version listed in this rule is incorporated. Any revision to the referenced material is not incorporated unless and until this rule has been amended to specify the new date.

(1) "Motor Vehicle Dealer Salesperson License Application, form "BMV 4301," (January, 2013), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(2) "Construction Equipment Auction License Annual Report," form "BMV 4313," (October, 2012), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(3) "Distributor's License Application," form "BMV 4314," (March, 2015), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(4) "Used Motor Vehicle Dealer Application," or form "BMV 4320," (January, 2015), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(5) "Leasing Motor Vehicle Dealer Application," form "BMV 4321," (February, 2015), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(6) "New Motor Vehicle Dealer Application," form "BMV 4322," (March, 2015), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(7) "Application for Construction Equipment Auction License," form "BMV 4324," (April, 2013), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(8) "Auction Owners License Application," form "BMV 4325," (January, 2015"), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(9) "Training Course Provider Application," or form "BMV 4326," (September, 2013), may be accessed via the dealer licensing website at <http://www.ohioautodealers.com>.

(10) "Civilian Identification Fingerprint Card," form "BIM-12-98," (December, 1998), may be accessed by contacting the Bureau of Motor Vehicles, Dealer Licensing Section.

*** DRAFT - NOT YET FILED ***

4501:1-3-38

2

(B) Materials incorporated by reference are also available by writing to the "Bureau of Motor Vehicles, Dealer Licensing Section, P.O. Box 16521, Columbus, Ohio 43216-6521."