

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Before the Oregon Department of Justice, Financial Fraud/Consumer Protection Section
Civil Enforcement Division

Administrative Rules Chapter Number: 137

In the Matter of: **Adoption of Amendments to OAR 137-020-0050**

Rule Caption: **Motor Vehicle Advertising.**

Statutory Authority: **ORS 646.608(4).**

Other Authority: Not Applicable.

Stats. Implemented: **ORS 646.608(1)(u).**

Need for the Rule(s):

OAR 137-020-0050, ("Motor Vehicle Advertising rule" or "the rule"), originally adopted in 1987, has not been substantively amended since 1996. The proposed amendment addresses changes in the industry and more clearly distinguishes between lawful and unlawful conduct in the advertising practices for used and new motor vehicles.

A motor vehicle is a necessity for many Oregonians. Many Oregonians must have a car to get to work and to carry out other essential activities of daily living. For many Oregonians, the purchase or lease of a motor vehicle is one of the most significant financial commitments they will ever undertake — typically second to only the purchase of their home. Similarly, many Oregonians derive their livelihood from selling motor vehicles.

The Department of Justice (DOJ) annually tallies and categorizes the number of written complaints it receives alleging unfair or deceptive practices in motor vehicle advertising and sales. The table below shows the rank of allegations lodged with DOJ by calendar year.

YEAR	Rank in Top 10 of All DOJ Consumer Complaints Motor Vehicle Sales
2006	Third
2005	Fourth
2004	Fourth
2003	Fourth
2002	Seventh
2001	Fourth
2000	Unranked
1999	Used/Fifth & New/Sixth
1998	Used/Third & New/Ninth
1997	Used/Second (Franchised and Independent combined) & Used/Ninth (Independent only)

The Oregon Department of Transportation annually registers nearly two million vehicles and issues more than 1.3 million vehicle titles. By comparison, in 2006, the Department of Justice tallied 700 consumer complaints about motor vehicle sales. As

evidenced by this comparison, most motor vehicle dealers compete fairly with one another and avoid unfair or deceptive advertising and sales practices. The persistence on DOJ's Top-Ten list of complaints about unfair or deceptive practices in motor vehicle sales and advertising nevertheless indicates that some unscrupulous dealers engage in such practices. Such conduct disadvantages honest motor vehicle dealers and deceives or treats unfairly consumers.

Advertising practices have evolved since the rule was last amended. Complaints received by DOJ allege unfair or deceptive conduct in connection with many of the new advertising practices, including unscrupulous and deceptive advertising promotions, misleading promotions by some advertising agencies and increased use of the internet to market motor vehicles.

As proposed to be amended, the Motor Vehicle Advertising rule gives specific and clear guidance for motor vehicle advertising, including those practices that have become more common since the rule was last amended.

Documents Relied Upon, and where they are available:

- a) Consumer complaints and industry complaints from individual Oregonians and from industry competitors. These are too numerous to list individually, but the documents are maintained by DOJ and can be made available for inspection, upon reasonable advance notice, from: Records Custodian, Oregon Department of Justice, Financial Fraud/Consumer Protection Section, 1162 Court Street NE, Salem, OR 97310-4096.
- b) Records of past enforcement actions undertaken by DOJ regarding the motor vehicle advertising in Oregon. These records are likewise too numerous to list here individually. Documents relied upon can be made available for inspection as well, upon reasonable advance notice, from the individual listed in Paragraph a) above.

Fiscal and Economic Impact, including Statement of Cost of Compliance:

The proposed amendments should have no net expenditure, revenue, or position impact on DOJ or any other state agency, unit of local government or member of the public. DOJ expects that the rule will help motor vehicle dealers avoid unfair or deceptive advertising practices, which in turn will lead to fewer civil prosecutions regarding the advertising of motor vehicles than have occurred in recent biennia.

The net cost to motor vehicle dealers of compliance with the rule is difficult for DOJ to estimate. DOJ expects motor vehicle dealers to incur increased, one-time costs as they adjust advertising practices to the new requirements. DOJ also expects motor vehicles to reap offsetting reduced costs. The rule, and the commentary DOJ plans to publish separately, should reduce compliance costs by allowing motor vehicle dealers and advertising agencies to more easily avoid unfair or misleading advertising practices. The rule should also reduce costs by reducing the number of conflicts dealers have with their customers, and by helping dealers avoid costly litigation. The rules add no new reporting requirements and no new professional services are anticipated to be required. No additional equipment, supplies or labor are required for compliance.

How were small businesses involved in the development of this rule?

A DOJ Advisory Committee was convened as part of this rulemaking process. The committee included small businesses that would be affected. DOJ solicited comments about the fiscal impact of the proposed amended rule. DOJ did not receive any such comments.

Administrative Rule Advisory Committee consulted? Yes.

Types of Small Businesses or Industries Affected: There are approximately 2,650 independent motor vehicle dealers and 350 franchised car dealers, many of which are small businesses.



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Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.