

Regulatory Analysis Form

(Completed by Promulgating Agency)

**INDEPENDENT REGULATORY
REVIEW COMMISSION**

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Independent Regulatory
Review Commission

February 6, 2024

IRRC Number: **3373**

(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency

Office of Attorney General

(2) Agency Number: 59

Identification Number: 001

(3) PA Code Cite: 37 Pa. Code Ch. 301

(4) Short Title: Automotive Industry Trade Practices

(5) Agency Contacts (List Telephone Number and Email Address):

Primary Contact: Sarah Frasch, Chief Deputy Attorney General, (717) 787-9707
sfrasch@attorneygeneral.gov

Secondary Contact: John Abel, Senior Deputy Attorney General, (717) 787-9707
jabel@attorneygeneral.gov

(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The purpose of this rulemaking is to amend the Automotive Industry Trade Practices regulations (Auto Regulations) under the Unfair Trade Practices and Consumer Protection Law (UTPCPL). First, the amendment modernizes the Auto Regulations' definition of "advertisement" to include electronic means. Second, the amendment requires motor vehicle dealers to inspect the motor vehicles in their inventory at specified times. Finally, the amendment requires motor vehicle dealers to make additional written disclosures when selling a motor vehicle bearing certain unsafe conditions.

(8) State the statutory authority for the regulation. Include specific statutory citation.

Section 3.1 of the UTPCPL, 73 P.S. § 201-3.1.

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

No.

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The rulemaking is necessary to make explicit that advertisements for motor vehicles and motor vehicle goods and services must comply with the Auto Regulations across all media. The inspection and disclosure requirements are necessary to better inform both sellers and consumers of the faults present in a motor vehicle made available for sale.

The rulemaking is in the public interest because it ensures that the parties to the sale of a motor vehicle and motor vehicle goods and services are more fully informed and not misled by unfair and deceptive advertisement. A consumer's knowledge that a motor vehicle bears certain unsafe conditions could have an incidental, positive effect on traffic safety by putting the consumer on notice that the motor vehicle should not be driven.

Compliant motor vehicle dealers would also benefit from increased consumer confidence that a transaction to purchase a motor vehicle will be fair and informed.

(11) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

The Federal Trade Commission (FTC) Used Motor Vehicle Trade Regulation Rule, 16 C.F.R. §§ 455.1, *et seq.*, addresses the sale of used motor vehicles. Under this Rule, it is a deceptive act or practice for a used vehicle dealer (1) to misrepresent the mechanical condition of a used vehicle; (2) to misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and (3) to represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty. 16 C.F.R. § 455.1(a). This Rule does not apply where a State requirement "affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule." 16 C.F.R. § 455.6.

From the experience of investigating consumer complaints related to the sale of motor vehicles and bringing enforcement proceedings under the UTPCPL to enjoin unfair and deceptive practices, OAG believes that this rulemaking will better facilitate the discovery and disclosure of conditions which would render a vehicle advertised or offered for sale not to be roadworthy. It will further allow the OAG to more effectively enforce the UTPCPL against those unscrupulous motor vehicle dealers who do not follow the law. In so doing, this rulemaking will both directly provide consumers with more information about motor vehicles which they are considering purchasing as well as allowing bad actors in the industry to be more efficiently enjoined from engaging in unfair practices. Both effects of this rulemaking serve the compelling interests of furthering and safeguarding fair dealing in the motor vehicle retail industry and keeping Pennsylvanians safe on the road.

From January 1, 2019 through December 18, 2023, OAG has received more than 150,500 consumer complaints. Year to year, complaints concerning motor vehicles are among the most common, if not the most common. Over this same period, more than 22,000 consumer complaints (nearly 15% of the total) have concerned motor vehicles. Within this subdivision of consumer complaints, a potentially unsafe condition which may not have been adequately disclosed was noted more than 6,500 times. The methodology used by the OAG is more fully set forth in the Comment & Response Document accompanying this final-form rulemaking. In short, however, a common issue faced by the OAG in

investigating these complaints is the lack of concrete evidence of whether the selling motor vehicle dealer in fact made the disclosures which they are obligated to make under 37 Pa. Code § 301.2(5) and whether the dealer knew or should have known that condition existed at the time of sale.

(12) How does this regulation compare with those of the other states? How will this affect Pennsylvania's ability to compete with other states?

This regulation is comparable with the automobile advertising regulations of neighboring states. While the inspection regulation appears formally unique among Pennsylvania and its neighboring states, most motor vehicle dealers already perform a safety inspection on all motor vehicles within a week of their arrival into the dealer's inventory and most motor vehicles will accumulate fewer than 250 miles before being sold. New Jersey requires a vehicle to meet all state inspection requirements prior to sale. As such, the regulation is not expected to alter current industry practice and thus is not anticipated to affect Pennsylvania's ability to compete with other states.

(13) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This regulation will not affect any other OAG regulations or those of other state agencies.

(14) Describe the communications with and solicitation of input from the public, any advisory council/group, small businesses and groups representing small businesses in the development and drafting of the regulation. List the specific persons and/or groups who were involved. ("Small business" is defined in Section 3 of the Regulatory Review Act, Act 76 of 2012.)

The OAG conducted a public hearing on September 11, 2018, which was noticed in the Pennsylvania Bulletin published on August 11, 2018. Chad Marsar, Vice President of Legal & Regulatory Affairs for the Pennsylvania Automotive Association, testified at this hearing, restating his testimony in a letter sent to OAG on September 4, 2018. OAG also received written comments from Reg Evans, Executive Director of the Pennsylvania Independent Automobile Dealers Association (PIADA).

Noting that the substance of this rulemaking changed between the 2018 hearing and the 2023 proposed rulemaking, IRRC encouraged the OAG to hold an additional public hearing. The OAG did so on December 13, 2023, following a published notice in the Pennsylvania Bulletin on November 11, 2023. In the published notice, the OAG welcomed any testimony but posed three questions in particular which arose following the receipt of public comments. Once again, the Pennsylvania Automotive Association provided helpful testimony which was instrumental in the completion of this final-form rulemaking.

(15) Identify the types and number of persons, businesses, small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012) and organizations which will be affected by the regulation. How are they affected?

This regulation will affect businesses involved in the sale and advertisement of motor vehicles and motor vehicle goods and services, as well as the consumers involved in transactions with those businesses and subject to their advertisements.

There are approximately 40-45 automobile brands which market and sell motor vehicles in the United States. Though certain of these brands may be under the same umbrella companies, to the extent that each brand operates independently and may be considered a “Manufacturer” under the Auto Regulations, this is the approximate number of manufacturers which will be required to comply. There is a comparable number of motorcycle manufacturers. There are comparatively many fewer RV manufacturers which advertise in Pennsylvania, perhaps around 10. Per United States Small Business Administration (SBA) size guidelines, automobile and light duty motor vehicle manufacturing businesses are “small” if they employ up to 1,500 employees. The OAG is without sufficient information to determine precisely how many motor vehicle manufacturers are small businesses, but according to United States Census Bureau data from 2020, this would account for nearly all businesses categorized as engaged in “Motor Vehicle Manufacturing.” However, the OAG anticipates that the impact on manufacturers by these regulations will not be significant. It is generally the case that a motor vehicle manufacturer may not own and operate their own dealerships in Pennsylvania. Compliance with the provisions amending the definition of “advertisement,” as explained herein and in the Comment & Response document, the inclusion of electronic media is merely a clarifying measure and reflects the status quo.

According to data from the Pennsylvania Department of State, there are presently 6,070 active Pennsylvania motor vehicle dealer licenses in the Commonwealth. However, the Pennsylvania Board of Vehicles Act defines “dealer” more broadly than the Auto Regulations, *see* 63 P.S. § 818.102, and thus this figure likely overstates the number of new or used motor vehicle dealers which will be affected by this rulemaking (aside from adherence to the new definition of “advertisement”). On the other hand, out-of-state dealers which advertise to Pennsylvania consumers are expected to adhere to the Auto Regulations except where expressly exempted. The OAG would suggest that motor vehicle dealerships just across state lines as well as the emerging market for internet-based motor vehicle dealers would serve to make 6,000 dealers a reasonable approximation. Per SBA guidelines, a new car dealership is “small” if it employs up to 200 persons and a used car dealership is “small” if its average annual receipts do not exceed \$30.5 million. Recreational vehicle dealers and dealers of motorcycles, ATVs and all other motor vehicles are “small” if their average annual receipts do not exceed \$40 million. According to the United States Census Bureau Statistics of U.S. Businesses survey from 2020, over 60% of new car dealers met the definition of a small business. According to the SBA Office of Advocacy, 99.9% of American businesses are “small businesses.” Considering that, generally speaking, a used car dealership will be a smaller operation than a new car dealership, the OAG estimates that the proportion of used car dealerships hews closer to the national average. For the purposes of this analysis, OAG will estimate that 95% of motor vehicle dealers are small businesses, as defined by the RRA. Motor vehicle dealers are most directly affected by the rulemaking, as they are the entity most likely to advertise or offer motor vehicles for retail sale to Pennsylvania consumers. As such, they would be required to inspect for and disclose any of the conditions listed in § 301.2(5) within thirty days of a motor vehicle entering their inventory and, thereafter, inspect for and disclose the presence of all but § 301.2(5)(iii) within thirty days of a vehicle in their inventory accumulating 500 miles. When completing the sale of a motor

vehicle, dealers will be required to also adhere to new subsection § 301.4(a)(9.1), concerning the written disclosure of any enumerated conditions when a car which they know or should know not to be roadworthy is sold “As-Is.”

The third type of entity defined in the Auto Regulations is the “repair shop.” This is a broad category, including any “person who, for compensation, engages in the business of diagnosing or repairing malfunctions of or damage to motor vehicles or who performs maintenance service on motor vehicles.” 37 Pa. Code § 301.1. The persons or entities which meet this definition would certainly include a significant amount of vehicle manufacturers and/or dealers and significantly exceed this figure, but the OAG is without sufficient data to make a more specific approximation of the number of persons or entities in Pennsylvania who meet this definition. At any rate, however, this rulemaking would only affect repair shops in the same slight way set forth above for vehicle manufacturers.

This regulation is not anticipated to adversely affect small businesses. As stated in Paragraph 12, the thirty-day inspection requirement harmonizes with current industry practice. The additional requirement to inspect for certain conditions in the limited number of vehicles which exceed 500 miles is, as more specifically discussed elsewhere, not intended or anticipated to impose costs which disproportionately burden smaller motor vehicle dealers. Requiring motor vehicle dealers to disclose certain unsafe conditions on sales documents presents de minimis administrative work in return for a more fully informed transaction, a positive outcome for consumers and the market as a whole.

(16) List the persons, groups or entities, including small businesses that will be required to comply with the regulation. Approximate the number that will be required to comply.

All motor vehicle dealers, manufacturers, repair shops, and any business which advertises on behalf of the foregoing will be required to observe and comply with the amendments to §§ 301.1 and 301.2(5) of the Auto Regulations, where applicable. Only motor vehicle dealers will be required to comply with the additions, §§ 301.2(5.1) and 301.4(9.1). The OAG’s reasoning for the following approximations is set forth more fully above, in RAF #15:

- Motor Vehicle Manufacturers: Approximately 150
- Motor Vehicle Dealers: Approximately 6,000
- Motor Vehicle Repair Shops: Approximately 10,000+

As discussed herein, each of these entities is required to comply with the regulations, but compliance for most manufacturers and repair shops may be characterized as “business as usual.” Motor vehicle dealers are most directly affected by the rulemaking via the standardization of common industry practice and a limited number of additional inspections for a limited number of specified conditions.

(17) Identify the financial, economic and social impact of the regulation on individuals, small businesses, businesses and labor communities and other public and private organizations. Evaluate the benefits expected as a result of the regulation.

Through this regulation, participants and consumers in the market for motor vehicles will be protected from unscrupulous advertising practices over the internet. Consumers will be assured that vehicles they purchase have been timely inspected for their safety, and will be notified by the motor vehicle dealer if the motor vehicle in question bears certain unsafe conditions, and for what reasons.

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

As stated above, the only likely cost is de minimis administrative work related to the sale of some motor vehicles and perhaps an additional inspection for certain conditions which are not difficult to discover in certain uncommon cases. The benefits of clarifying the Auto Regulations and assuring and informing consumers outweigh any costs or adverse effects.

(19) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

The OAG estimates that there is no cost of compliance for motor vehicle manufacturers and repair shops, for reasons set forth above.

The OAG estimates that the total annual cost of compliance for motor vehicle dealers will be, on average, \$41 per vehicle entering inventory plus \$540, given several caveats, discussed below.

First, as to the inspection upon entering inventory, the labor cost to a dealership to perform a full Pennsylvania safety inspection will vary across different areas of the Commonwealth, if not dealership to dealership depending on whether they employ a certified inspection mechanic. The total cost will also vary depending on the number of vehicles each dealership will bring into its inventory in a given year, a number which can vary widely based on a myriad of factors. The OAG's best estimate for the average cost per vehicle is \$41. This number was reached by determining that the average cost that a Pennsylvania consumer can expect to pay for a safety inspection will be between \$20 and \$50.

Assuming either that a motor vehicle dealer employs a certified inspection mechanic or else maintains a positive working relationship with a local certified inspection mechanic, the average cost of the safety inspection may be below the standard price paid by the average consumer. To reflect this, the OAG has made a conservative reduction in the approximate average cost to \$30, plus \$11 for a PennDOT sticker. This calculation does not include the cost of an emissions inspection. To the extent that a dealership already adheres to the common industry practice of inspecting vehicles upon entry to their inventory, compliance with this portion of the regulation will not impose any additional costs.

Second, as to the inspection for certain specified conditions upon accumulating 500 miles, the OAG estimates that the total annual cost of compliance will be \$540. This is based on the estimate provided by the Pennsylvania Automotive Association that the average new vehicle dealership will have 27 vehicles accumulate more than 500 miles while in their inventory. Under the revised rulemaking, these vehicles would expressly not need to be subject to an entire Pennsylvania safety inspection, instead only examined for the enumerated conditions in § 301.2(5), excluding § 301.2(5)(iii). Furthermore, this inspection would not need to be undertaken by a certified inspection mechanic, given the ease with which any individual acquainted with the sale of motor vehicles will be able to discover them, if they are present. The OAG anticipates that the labor and administrative cost of determining whether these conditions are present will be substantially less than the cost of a full inspection. The OAG has used an approximate cost of \$20, but this is variable to the region of the Commonwealth.

Beyond labor costs, compliance with Subsection 5.1 may impose de minimis administrative costs, as it may be beneficial to keep an eye on the mileage of a limited number of vehicles which a dealer would expect to exceed 500 miles while in their inventory. Disclosing conditions per new subsection §

301.4(a)(9.1) may also impose small administrative costs via the act of making written disclosure on a contract following cross-referencing an MV431, for example.

The OAG would suggest that compliance with these regulations could also save the regulated community money in a situation where they are alleged to have sold a vehicle which was not roadworthy without adequate disclosure. The presence of a clear written record—or the absence thereof—in records which the dealer is already required by law to retain may reduce the administrative burden of searching for and turning over relevant documents.

(20) Provide a specific estimate of the costs and/or savings to the **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

No anticipated costs and/or savings to local governments associated with this rulemaking.

(21) Provide a specific estimate of the costs and/or savings to the **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

Because the OAG anticipates that the rulemaking will reduce the amount of consumer complaints of the type discussed herein and in the Comment & Response Document, the OAG will save money by having to investigate and/or mediate fewer complaints. The OAG further anticipates that in improving the ability of the OAG to investigate and enforce the UTPCPL against unscrupulous actors, this rulemaking will reduce investigation and litigation costs and may result in the more efficient imposition of monetary relief in the forms of civil penalties which are paid to the Pennsylvania State Treasury and help offset OAG litigation costs, respectively. The OAG is not able to provide a specific estimate of the savings which these improvements may bring about, but it could certainly reach into the thousands of dollars.

(22) For each of the groups and entities identified in items (19)-(21) above, submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Dealers will be required to develop and implement a means to disclose in writing the conditions required under § 301.2(5).

(22a) Are forms required for implementation of the regulation?

See above.

(22b) If forms are required for implementation of the regulation, **attach copies of the forms here**. If your agency uses electronic forms, provide links to each form or a detailed description of the information required to be reported. **Failure to attach forms, provide links, or provide a detailed description of the information to be reported will constitute a faulty delivery of the regulation.**

Not applicable.

(23) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years. **Not applicable.**

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	\$	\$	\$	\$	\$	\$
Regulated Community	N/A					
Local Government						
State Government						
Total Savings						
COSTS:						
Regulated Community	\$41/v(ehicle) + \$540	\$41/v. + \$540	\$41/v. + \$540	\$41/v. + \$540	\$41/v. + \$540	\$41/v. + \$540
Local Government						
State Government						
Total Costs						
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses						

(23a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3	FY -2	FY -1	Current FY
N/A				

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(24) For any regulation that may have an adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), provide an economic impact statement that includes the following:

- (a) An identification and estimate of the number of small businesses subject to the regulation.
- (b) The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record.
- (c) A statement of probable effect on impacted small businesses.
- (d) A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

This statement concerns motor vehicle dealers subject to the regulation which may be defined as small businesses, only. As set forth above, there is no significant cost or adverse impact expected for vehicle manufacturers or repair shops, small or otherwise.

Per SBA guidelines, a new car dealership is “small” if it employs up to 200 persons and a used car dealership is “small” if its average annual receipts do not exceed \$30.5 million. Recreational vehicle dealers and dealers of motorcycles, ATVs and all other motor vehicles are “small” if their average annual receipts do not exceed \$40 million. Based on the OAG’s estimate that there will be approximately 6,000 motor vehicle dealers most directly affected by this regulation, and assuming 95% may be considered small businesses under Pennsylvania and Federal law, approximately 5,700 small businesses will be subject to this regulation.

The costs required for compliance with this regulation are, as discussed above, not anticipated to be significant and are set forth in the fiscal impact table in RAF #23. Considering that it is already a common practice for a motor vehicle dealer to inspect every vehicle that enters its inventory, and dealers are already required to maintain a record of such inspection on the applicable PennDOT form, any additional administrative, reporting or recordkeeping costs are anticipated to be de minimis regardless of the size of the business. There are no additional professional skills that OAG expects to be necessary to comply with the regulation.

The OAG would acknowledge that there may be some particularly small motor vehicle dealers which do not maintain a repair shop on their premises or else employ a certified inspection mechanic. In the event that they do not already inspect motor vehicles upon entering their inventory, their cost of compliance may be higher than the average approximate cost per vehicle. However, the OAG would also expect that the smaller the motor vehicle dealer, the fewer the vehicles which will enter their inventory. As noted also, the inspection contemplated after 500 miles is expressly not to be construed as a Pennsylvania vehicle safety inspection, and the rulemaking does not require a certified inspection mechanic to look for the select conditions.

The purpose of this regulation is to better ensure that disclosure requirements which are already in place are being adhered to by requiring the disclosures to appear in writing. Subsection (5.1) is intended to ensure that all motor vehicles advertised to Pennsylvania consumers are properly and timely determined to be roadworthy, with further requirements imposed for a select number of cars for which a consumer

has a particular interest in having accurate information. The OAG asserts that this final-form rulemaking, crafted with the assistance of the regulated community via public comments, has been crafted into the least costly method of achieving these ends.

(25) List any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, the elderly, small businesses, and farmers.

Not applicable.

(26) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

The OAG considered the status quo and determined that modernization of the Auto Regulations' definition of "advertisement" is the least burdensome acceptable alternative.

The OAG considered both the status quo and requiring a safety inspection no more than thirty days prior to the sale of a vehicle, but by considering public comments decided that inspections upon a motor vehicle's introduction to a motor vehicle dealer's inventory and each in-inventory attainment of 500 miles would be the least burdensome acceptable alternative to ensure the sale of safe motor vehicles.

The OAG considered both the status quo and simply stating that an "As Is" disclaimer would be insufficient for the sale of an unroadworthy vehicle. OAG determined that in either case consumers were not being fully informed, and in the latter case that motor vehicle dealers did not have clear direction as to what written disclosure would be necessary. As such, requiring a list of unroadworthy conditions is the least burdensome acceptable alternative.

(27) In conducting a regulatory flexibility analysis, explain whether regulatory methods were considered that will minimize any adverse impact on small businesses (as defined in Section 3 of the Regulatory Review Act, Act 76 of 2012), including:

- a) The establishment of less stringent compliance or reporting requirements for small businesses;
- b) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;
- c) The consolidation or simplification of compliance or reporting requirements for small businesses;
- d) The establishment of performance standards for small businesses to replace design or operational standards required in the regulation; and
- e) The exemption of small businesses from all or any part of the requirements contained in the regulation.

The OAG considered the impact of this rulemaking on small businesses and determined that no significant adverse impact to small business is expected because the regulation clarifies definitions, harmonizes with industry practice, and presents a de minimis administrative cost in a limited number of cases. In the limited number of situations where a compliance cost may be higher for a particularly small business, the OAG has determined that this is not a disproportionately high cost.

(28) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

Not applicable.

(29) Include a schedule for review of the regulation including:

- A. The length of the public comment period:
30 days after publication of the proposed rulemaking in the *Pennsylvania Bulletin*.
- B. The date or dates on which any public meetings or hearings will be held:
September 11, 2018
December 13, 2023
- C. The expected date of delivery of the final-form regulation: February 6, 2024
- D. The expected effective date of the final-form regulation: May 6, 2024
- E. The expected date by which compliance with the final-form regulation will be required: June 5, 2024
- F. The expected date by which required permits, licenses or other approvals must be obtained: Not applicable

(30) Describe the plan developed for evaluating the continuing effectiveness of the regulations after its implementation.

The regulation will be reviewed for its effectiveness annually.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

RECEIVED

Independent Regulatory
Review Commission

February 6, 2024

DO NOT WRITE IN THIS SPACE

<p>Copy below is hereby approved as to form and legality. Attorney General</p> <p>BY: _____ (DEPUTY ATTORNEY GENERAL)</p> <p>_____ DATE OF APPROVAL</p> <p><input type="checkbox"/> Check if applicable Copy not approved. Objections attached.</p>	<p>Copy below is here by certified to be a true and correct copy of a document issued, prescribed or promulgated by:</p> <p><u>Office of Attorney General</u> (AGENCY)</p> <p>DOCUMENT/FISCAL NOTE NO. <u>59-10</u> DATE OF ADOPTION: <u>2/6/2024</u></p> <p>BY: <u>[Signature]</u> TITLE <u>First Deputy Attorney General</u> (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)</p>	<p>Copy below is hereby approved as to form and legality. Executive or Independent Agencies.</p> <p>BY: <u>[Signature]</u></p> <p><u>2/6/2024</u> DATE OF APPROVAL</p> <p>(Chief Counsel, Independent Agency) (Strike Inapplicable title)</p> <p><input type="checkbox"/> Check if applicable. No Attorney General approval or objection within 30 days after submission.</p>
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FINAL-FORM RULEMAKING

OFFICE OF ATTORNEY GENERAL

[37 PA. CODE CH. 301]

Automotive Industry Trade Practices; Notice of Final-Form Rulemaking

[XX Pa.B.]
[Xday, Month xx, 20XX]

Title 37—Law Office of Attorney General 37 Pa. Code Ch. 301

The Office of Attorney General (OAG), through its Public Protection Division, is amending 37 Pa. Code by amending Chapter 301 (relating to automotive industry trade practices) to read as set forth in Annex A.

A. *Effective Date*

This rulemaking will be effective 30 days after publication in the *Pennsylvania Bulletin*.

B. *Contact Person*

For further information on the rulemaking, the primary contact is Sarah Frasch, Chief Deputy Attorney General, Bureau of Consumer Protection and the secondary contact is John Abel, Senior Deputy Attorney General, Bureau of Consumer Protection, Pennsylvania Office of Attorney General, Strawberry Square, 15th Floor, Harrisburg, PA 17120, (717) 787-9707.

C. *Statutory Authority*

This rulemaking is being made under the authority of section 3.1 of the Unfair Trade Practices and Consumer Protection Law (act) (73 P.S. § 201-3.1), regarding the statutory rulemaking authority of the OAG.

D. *Purpose and Background*

The rulemaking is designed to improve, enhance and update the OAG's unfair or deceptive acts or practices regulations. The specific purpose of the rulemaking is described in more detail under the summary of rulemaking.

E. Summary of Rulemaking

1. Introduction

The OAG enforces and administers the act. The OAG has determined that it is necessary for the enforcement and the administration of the act to amend the existing automotive industry trade practices regulations to provide adequate protections to consumers regarding the inspection of motor vehicles and the written disclosure of certain attributes of a motor vehicle's roadworthiness.

2. Policy and Determination

The OAG has long taken the policy position that certain unfair or deceptive automotive industry market trade practices constitute unfair methods of competition and unfair or deceptive acts or practices in violation of the act.

Through the experience of investigation and litigation, the OAG has identified that motor vehicle dealers are increasingly utilizing electronic means to advertise the sale of particular motor vehicles and motor vehicle goods and services, a practice which is not explicitly captured in the automotive industry trade practices regulations' current definition of "advertisement." The OAG has further identified that the disclosures and inspections which motor vehicle dealers are currently required to perform are insufficient to fully inform consumers that they are purchasing motor vehicles bearing certain unsafe conditions. The OAG has determined that this rulemaking under the act will remedy these vacuums under the state law.

3. Automotive Industry Trade Practices

The OAG has adopted the staff recommendation to make certain amendments to the Automotive Industry Trade Practices regulations. First, Section 301.1 (definitions) includes electronic means in the definition of "advertisement." Second, Section 301.2(5) (relating to written disclosures) is amended to require that the disclosure of the enumerated conditions be provided in writing.

Third, Section 301.2(5.1) (relating to advertising and sales presentation requirements) is created. It directs that a motor vehicle dealer may not advertise or offer a motor vehicle for sale unless the selling motor vehicle dealer to designates a certified inspection mechanic to inspect a motor vehicle not more than 30 days after it enters the motor vehicle dealer's inventory for all conditions listed in Section 301.2(5). Thereafter, if the motor vehicle accumulates 500 miles while in the inventory of the selling motor vehicle dealer, the dealer must inspect the motor vehicle for the conditions listed in Section 301.2(5), excluding the ability of the vehicle to pass a State inspection. This section does not apply to sales of motor vehicles between

two motor vehicle dealers, the sales of motor vehicles pursuant to a duly authorized vehicle auction license, the sales of salvaged or nonrepairable motor vehicles bearing the applicable certificate, or the sales of motor vehicles which are located outside the Commonwealth of Pennsylvania during the entire time it is advertised or offered for sale.

Finally, Section 301.4(9.1) (relating to general provisions— motor vehicle dealer) clarifies that compliance with section 301.2(5) (relating to written disclosures) is still required notwithstanding any use of the term, AS IS, under section 301.4(9) (relating to disclaiming warranty). The selling motor vehicle dealer must describe the vehicle as being sold “As-Is,” and list in writing any conditions listed in Section 301.2(5) present in the vehicle.

These amendments have been prepared in light of comments previously submitted by interested parties, the Pennsylvania Automotive Association and the Independent Automobile Dealers Association of Pennsylvania.

4. *Basic Policy Choice*

"The operative provision of the Unfair Trade Practices and Consumer Protection Law provides: 'Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. . . are hereby declared unlawful.'" 73 P.S. § 201-3 (emphasis added). *Gabriel v. O'Hara*, 368 Pa. Super. 383, 391, 534 A.2d 488, 492 (1987). The operative provision of the act provides the Legislature's basic policy choice which guides the OAG's rulemaking. The OAG proposes that Chapter 301 be amended to read as set forth in Annex A.

F. *Paperwork*

Generally, the rulemaking will not increase paperwork and will not create new paperwork requirements. The rulemaking will have a de minimis impact on paperwork for class action representatives purporting to settle and release OAG claims under the act.

G. *Benefits, Costs and Compliance*

Through this rulemaking, consumers will be further protected from unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce by unscrupulous businesses. The clear articulation of this unfair or deceptive trade practices regulation will make the regulation easier to understand by the public and will facilitate compliance.

The rulemaking will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The OAG estimates that the cost of compliance with this rulemaking may average \$540.00 annually plus \$41.00 per vehicle entering the inventory of a dealership, subject to several caveats, including whether the particular motor vehicle dealership already

subjects all vehicles entering their inventory to a safety inspection.

H. *Sunset Review*

The OAG is not establishing a sunset date for these regulations because they are needed for the OAG to carry out its statutory authority and because the OAG will periodically review these regulations for their effectiveness.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P.S. § 45.5(a)), on April 28, 2023, the OAG submitted a copy of its Proposed Rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Judiciary Committees. A copy of this material is available to the public upon request and is also available on IRRC's website at <http://www.irrc.state.pa.us> by searching for Regulation #59-001 or IRRC #3373.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria in section 5.2 of the Regulatory Review Act (71 P.S. § 745.5b) which have not been met. The Regulatory Review Act specifies detailed procedures for review prior to final publication of the rulemaking by the OAG, the General Assembly and the Governor.

The OAG received and reviewed a number of public comments following its submission of this Proposed Rulemaking, as well as comments from IRRC and the Honorable Representative Eric Nelson, MS, CSP. These comments have been considered and responded to via the Comment & Response Document attached hereto and summarized below. The Comment & Response Document is available to be viewed on IRRC's website, by the same means set forth above. Further, the OAG held a public hearing on December 13, 2023, at which it heard testimony from the Pennsylvania Automotive Association, both regarding the proposed rulemaking in general and in response to certain questions posed by the OAG in the Pennsylvania Bulletin.

J. *Summary of Comments and Responses*

The OAG considered each of the comments it received on its proposed rulemaking and identified sixteen (16) discrete questions, concerns and/or requests for clarification to which it has responded in its Comment and Response Document. These comments and the OAG's responses, including changes made in the final-form rulemaking, are summarized below.

IRRC requested that certain additional information be added to the Regulatory Analysis Form (RAF) accompanying the rulemaking.

First, IRRC requested that the OAG quantify the number and type of consumer complaints it has received from consumers over the last five years and to explain how the rulemaking will help prevent similar problems from occurring. From January 1, 2019 through December 18, 2023, the OAG Bureau of Consumer Protection received more than 150,500 written consumer complaints. Over 22,000 (approximately 15%) have concerned motor vehicles, representing one of the most common categories of consumer complaint year to year. Of these motor vehicle complaints, the OAG determined that the issues intended to be addressed by this rulemaking were presented in complaint narratives at least 6,500 times. The OAG anticipates that this rulemaking will address these problems in two primary ways. First, a consumer may be less inclined to purchase a vehicle if they are shown in writing that a vehicle bears certain conditions which render it not roadworthy. Second, the rulemaking will allow the OAG to more effectively enforce the act against the fraction of unscrupulous motor vehicle dealers who, under the regulations as they are presently written, may be able to skirt the law by claiming that certain unsafe conditions in a motor vehicle were disclosed verbally and, at any rate, were sold “As-Is.” In requiring these disclosures to be made in writing, the OAG will be on firmer footing should it be necessary to bring a proceeding to enjoin unfair or deceptive trade practices.

Second, IRRC requested that the OAG more concretely identify the types and numbers of persons, businesses (including small businesses) and organizations which will be affected and/or required to comply with the regulation and the possible costs associated with compliance. Using data from the US Census Bureau and the State Board of Vehicle Manufacturers, Dealers and Salespersons, the OAG estimates that approximately 150 motor vehicle manufacturers, 6,000 motor vehicle dealers and over 10,000 motor vehicle repair shops constitute the “regulated community” covered by the Auto Regulations. The change in the rulemaking applicable to all of these entities, amending the definition of “advertisement” is not expected to impose any significant costs. The bulk of the rulemaking applies only to motor vehicle dealers. As set forth above and in the OAG’s RAF, the annual cost of compliance for a motor vehicle dealer may be \$540.00 to inspect the limited class of vehicles which will accumulate 500 miles while in their inventory for certain conditions and \$41.00 to subject each vehicle entering their inventory to a full safety inspection. However, this figure is subject to several caveats, including the size of the particular dealership and whether it already adheres to the common industry practice of inspecting all vehicles which come into their inventory. As a final note, the OAG estimates that approximately 95% of affected motor vehicle dealers would be considered “small businesses” under Pennsylvania and Federal guidelines. Per the US Small Business Administration, 99.9% of American businesses are small businesses. The OAG expects that used motor vehicle dealers likely align with this figure, and new motor vehicle dealers are both fewer and less likely to be small businesses, and thus only reduce our estimated percentage slightly.

IRRC also asked certain clarifying questions. To address each in turn: (1) If an auto dealer lists all of its inventory on its website, that action **would** be considered an advertisement and therefore subject the auto dealer to all applicable requirements of Chapter 301. (2) There is **no difference** between a customer that finds an inventory list on a website via their own research and a customer that is persuaded to view a website through another advertisement, insofar as the Auto Regulations are concerned. (3) Out-of-state businesses have the **same obligations** as a business based in the Commonwealth in relation to the Auto Regulations, except where explicitly exempted therefrom, and the OAG has long relied on the act to enforce compliance upon all businesses which allegedly violate the act, wherever they are located.

IRRC further requested that the OAG explain how it will implement and administer the revised definition of “advertisement.” In short, the revised definition of “advertisement” is merely intended to modernize the regulations and make explicit what had always been considered to be the case, i.e. that online advertisements fall within the definition of “advertisement” as presently written.

The OAG received additional comments from IRRC and the public which led directly to changes from the proposed to the final-form rulemaking.

First, the OAG did not intend for the change of title from “Bureau of Consumer Protection” to “Unfair Trade Practices” to be included in the proposed rulemaking. The existing title of Part V is retained in the final-form rulemaking.

Second, the OAG has decided to remove the proposed addition to Subsection 5 in the final-form rulemaking. This would have required the advertiser or seller of a motor vehicle to disclose in writing “any other material condition which substantially impairs vehicle use or safety.”

Third, the OAG has taken several steps to make the proposed new Subsection 5.1 clearer in both what is expected of motor vehicle dealers and to which kinds of transactions it is intended to apply. As a threshold matter, the OAG notes that it intends that the rulemaking use the term “inspect” in its ordinary meaning (i.e., to take a careful look) and not, in itself, to refer to a PennDOT safety inspection. However, since one of the conditions which would render a motor vehicle not to be unroadworthy is the inability to pass State inspection, this would be the practical effect.

To better set forth the OAG’s intent with this proposed new subsection, it has been split into several subsections itself. Subsection (5.1)(a)(i) addresses inspection upon a motor vehicle’s entry into inventory, and requires a certified inspection mechanic designated by the selling motor vehicle dealer to inspect the motor vehicle for “all conditions listed in 37 Pa. Code § 301.2(5),” including the ability or inability to pass a State inspection. Subsection (5.1)(a)(ii) addresses the limited class of situations in which a motor vehicle

accumulates 500 miles while in the selling motor vehicle dealer's inventory. It merely requires the selling motor vehicle dealer to inspect the motor vehicle for "all conditions listed in 37 Pa. Code § 301.2(5), except § 301.2(5)(iii)." The remaining conditions for which a motor vehicle dealer would be required to take a careful look for should not take substantial time or labor to discover, and further do not require the services of a certified inspection mechanic.

On the applicability of Subsection 5.1, the OAG would note that the definition of "Dealer or motor vehicle dealer" in the Auto Regulations only includes persons who are "engaged in the business of selling, offering for sale or negotiating the **retail sale** of motor vehicles." 37 Pa. Code § 301.1. However, given concerns raised in the comments, the OAG has made a further alteration to Subsection 5.1 to expressly exempt certain transactions. These exemptions are now contained in Subsection (5.1)(b), which states that the section "shall not apply to the advertisement or offering for sale of a motor vehicle: (i) To another motor vehicle dealer; (ii) Pursuant to a duly authorized vehicle auction license; (iii) Bearing a certificate of salvage and/or a nonrepairable vehicle certificate; or (iv) Located outside the Commonwealth of Pennsylvania at all times during which it is advertised or offered for sale." The OAG has made these exemptions in recognition that certain types of motor vehicle transactions already have effective self-imposed safeguards in place and are largely populated by buyers who are more sophisticated than average and therefore less likely to require the protections afforded by the final rulemaking. The change also addresses issues which may arise in both compliance with and enforcement of the Auto Regulations in the context of a limited class of out-of-state motor vehicle dealers using certain novel business methods.

The OAG thanks the public, IRRC and Representative Nelson for providing comments in response to the proposed rulemaking. As a direct result of these comments, the OAG was able to prepare a final rulemaking which it believes to be much improved and which will more effectively protect consumers from harm from certain unscrupulous actors in the advertisement and sale of motor vehicles.

MICHELLE A. HENRY,

Attorney General



Public Protection Division

COMMENT AND RESPONSE DOCUMENT

Automotive Industry Trade Practices

37 Pa. Code Chapter 301
53 Pa.B. 2590 (May 13, 2023)
Office of Attorney General Regulation #59-001
(Independent Regulatory Review Commission #3373)

INTRODUCTION

The Office of Attorney General (OAG), through its Public Protection Division, has proposed to amend 37 Pa. Code Chapter 301 (relating to automotive industry trade practices) with the general intent to improve, enhance and update the OAG's unfair or deceptive acts or practices regulations. On April 28, 2023, the OAG submitted a copy of the proposed rulemaking to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate and House Judiciary Committees for review and comment in accordance with Section 5(a) of Pennsylvania's Regulatory Review Act (71 P.S. § 745.5(a)). On May 13, 2023, the OAG published the proposed rulemaking in the *Pennsylvania Bulletin* (53 Pa.B. 2590) for a 30-day public comment period that closed on June 12, 2023. Following the receipt of comments, the OAG announced a public hearing in the *Pennsylvania Bulletin* on November 11, 2023 (53 Pa.B. 7004), which was held on December 13, 2023. At said hearing, the OAG heard testimony from the Pennsylvania Automotive Association both on the proposed regulation in general and in regard to certain specific questions of particular interest to the OAG.

This Comment and Response Document provides responses to all comments received during the public comment period, as well as comments submitted by IRRC and the Honorable Representative Eric R. Nelson. The House and Senate Judiciary Committees have not submitted comments on the proposal.

A list of the commentators, including name and affiliation (if any) begins on page 3 of this document. The commentator list also includes identification numbers, which are referenced in parentheses following each comment in this document. Following IRRC and Representative Nelson, commentators are organized alphabetically, first by organization or affiliation, then, if unaffiliated, by surname.

Copies of comments received by the OAG are available on IRRC's website at <http://www.irc.state.pa.us> by searching for Regulation #59-001 or IRRC #3373.

LIST OF COMMENTATORS ON THE PROPOSED RULEMAKING

Organization & Name(s)	
1	Independent Regulatory Review Commission (IRRC)
2	The Honorable Representative Eric R. Nelson, MS, CSP
3	American Property Casualty Insurance Association Paul T. Tetrault, Senior Director, Personal Lines
4	Copart, Inc. Jeff Liaw, Co-Chief Executive Officer; Jennifer Caston; Alex Ciambrone; Jon Chuhran; Kayla Denne; Anita Eckenrode; Melissa Marsh; Jamie Miley; Amy Nabors; Jodi Nagy; Holly Ofchinick; Lori Ofchinick; Sabrina Schilling; Jaclyne Schnupp; William Shay
5	Greater Erie Auto Auction Ryan Russell, General Manager
6	Insurance Auto Auctions, Inc. Katerina Dotzeva, Director of Government Affairs
7	Insurance Federation of Pennsylvania Timothy L. Knapp, Esq., General Counsel
8	Lehigh Valley Auto Auction LLC Jerry Mekolichick
9	National Auto Auction Association Paul Lips, Executive Director
10	Pennsylvania Auctioneers Association Lon Clemmer, 2023 President
11	Pennsylvania Automotive Association Chad Marsar, Vice President, Legal & Regulatory Affairs
12	PENRAC, LLC (Enterprise Mobility) Keith R. Lorfink, ARM, Risk Manager
13	Vroom Automotive, LLC Anna-Lisa Corrales, Chief Compliance Officer
14	Terri Dambra
15	Laurie Staples

Acronyms Used in this Comment and Response Document

IRRC – Independent Regulatory Review Commission

OAG – Office of Attorney General

PennDOT – Pennsylvania Department of Transportation

RAF – Regulatory Analysis Form

UTCPL – Unfair Trade Practices and Consumer Protection Law (73 P.S. §§ 201-1, *et seq.*)

COMMENTS AND RESPONSES

1. Comment: In regard to RAF #11, IRRC requested that the OAG quantify the number and type of complaints it received from consumers over the last five years and explain how the provisions included in the rulemaking will help prevent similar problems from occurring. (1)

Response: In order to respond to this request, the OAG undertook a survey of its consumer complaints from January 1, 2019 through December 18, 2023, which are maintained in the OAG's complaint database. Consumer complaints are organized by the use of codes and sub-codes corresponding to the subject matter of those complaints, and complaints may further be searched for certain key phrases contained in the written narratives associated with each discrete complaint. The codes are assigned and the narratives are written by the individual Consumer Protection Agent fielding a given complaint, and thus it is possible that the specific numbers which the OAG presents in this document are on the conservative side, as some relevant complaints may have been coded unusually or the narratives provided may not have included the precise terms utilized in our survey. Nevertheless, the results underscore the need for this rulemaking in its final form.

Over the last five years, the OAG Bureau of Consumer Protection has received more than 150,500 written consumer complaints. Of the complaints received by the OAG, more than 22,000 (approximately 15%) have concerned motor vehicles. Year to year, this is one of the most common categories of consumer complaint.

The goal of this rulemaking is to better facilitate the discovery and disclosure of conditions which would render a vehicle advertised or offered for sale not to be roadworthy. To that end, in our survey, the OAG applied a list of key terms or phrases to the motor vehicle complaints to determine how often the agent-supplied narrative stated that a Pennsylvania consumer complained of a certain potentially unsafe condition in a vehicle. The OAG determined that these issues were presented in narratives more than 6,500 times. It should be noted that this does not necessarily translate to 6,500 discrete complaints, as one narrative could contain multiple key terms; however, given the variable substance of complaint narratives, it is once again possible that this number understates the number of times that Pennsylvania consumers who complained to the OAG have dealt with these conditions. The substance of a consumer's complaint may be more fully set forth in a .pdf file within their file versus the narrative; however, a granular survey of files within files would impose a significant administrative burden on the OAG. Given these caveats, though, the OAG asserts that the numbers presented via its survey fairly represent the prevalence of consumer complaints related to motor vehicles which are potentially not roadworthy or otherwise unsafe to drive. The key terms and phrases utilized in the survey include: Engine, Flood(ed), Motor, Gas Tank, Oil, Leak, Transmission, Brake(s), Tire(s), Un-roadworthy, Overheated, Inspection, Differential, Lights, Sealant, Smoke, Alignment, Steering, Battery, Odometer, Safety, Accident, Heat(er), Defrost(er), Air Condition(ing), Seatbelt, Sliding, Hydroplane, Stranded, Wrecked, Mirror, Rust, Tread, Windshield, Wipers and Bumper.

To the matter of how this rulemaking will help prevent similar problems from occurring, the OAG anticipates that when a consumer who is interested in purchasing a car sees in writing in an advertisement that a vehicle bears a condition that renders it not roadworthy, they will be less inclined to purchase that vehicle and therefore less likely to face issues which may result in the

submission of a consumer complaint. However, a more pressing concern is the fraction of unscrupulous motor vehicle dealers who would not be inclined to adhere to these new amendments to the Automotive Industry Trade Practices regulations. The vast majority of motor vehicle dealerships work with the OAG and industry trade groups to ensure that their business practices adhere to Pennsylvania law; in fact, it is already a common practice in the industry to inspect a motor vehicle once it enters the inventory of a motor vehicle dealer. A primary purpose of this rulemaking is to allow the OAG to more effectively enforce the UTPCPL against unscrupulous motor vehicle dealers who, under the regulations as they are presently written, may be able to skirt the law. They may do so by claiming that they disclosed a potentially unsafe condition verbally and, at any rate, that the vehicle was sold “As-Is.” The rulemaking makes clear that a motor vehicle dealer must make these disclosures in writing, and the failure to do so will provide the OAG more firm grounding to, if necessary, bring a proceeding to enjoin unfair or deceptive business practices without needing to contend with “he said she said” scenarios on a matter of such importance to public safety. Additionally, this rulemaking will assist in cases to establish whether a dealer knew or should have known a certain condition existed at the time of sale, requiring such written disclosure.

2. Comment: In regard to RAF #15, #16 and #24, IRRC requested that the OAG more concretely identify the types and numbers of persons, businesses (including small businesses) and organizations which will be affected and/or will be required to comply with the regulation, and the possible costs associated with compliance. IRRC further advised that if this rulemaking is applicable to businesses engaged in the sale of motor vehicles via an auction, that these businesses should be included in the OAG’s response. Finally, IRRC asked that the OAG explain whether this rulemaking applies to out-of-state businesses that sell vehicles through electronic means, such as a website, to Pennsylvania residents, and, if so, how many of these businesses would be affected by the rulemaking. **(1)**

Response: The OAG has provided more specific information, including its best approximation of the number of groups or entities which will be required to comply with the rulemaking in the applicable sections of the RAF. The OAG would also note, as discussed further herein, that businesses engaged in the sale of motor vehicles via an auction are not included in our approximations. Out-of-state businesses are subject to these regulations except where expressly excluded and have been included in approximations as well as can be expected.

3. Comment: In regard to RAF #19 and #23, IRRC requested that the OAG revise its fiscal impact statements to include the cost associated with inspecting vehicles by auto dealers selling the vehicles and, if applicable, businesses that auction vehicles. **(1)**

Response: Noting the caveat that the cost of inspecting a vehicle likely differs widely across the Commonwealth, the OAG has attempted to approximate the fiscal impact of the rulemaking. The fiscal impact to businesses which auction vehicles has not been included, for reasons discussed herein.

4. Comment: In regard to RAF #29, IRRC requested that the OAG update the dates for the schedule of review when the rulemaking is submitted in final-form. **(1)**

Response: OAG has done so, and updated dates are listed in RAF #29.

5. Comment: IRRRC: “If an auto dealer lists all of its automobile inventory on its website, would that action be considered an advertisement, and therefore subject the auto dealer to all of the requirements of Chapter 301?” (1)

Response: Yes.

6. Comment: IRRRC: “Is there a difference between a customer that finds an inventory list on a website via their own research compared to a customer that is persuaded to view a website through an advertisement?” (1)

Response: No, insofar as the regulation is concerned.

7. Comment: IRRRC: “What obligations, if any, do out-of-state businesses have if they advertise in the Commonwealth, and what authority would the OAG have to enforce compliance by those businesses?” (1)

Response: The Pennsylvania UTPCPL, from which the present rulemaking proceeds, defines “trade” and “commerce” as “the advertising, offering for sale, sale or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value **wherever situate**, and includes any trade or commerce directly or indirectly affecting the people of this Commonwealth.” 73 P.S. § 201-2(3) (emphasis added). The UTPCPL further states that “whenever the Attorney General...has reason to believe that **any person** is using or is about to use any method, act or practice declared by section 3 of this act to be unlawful, and that proceedings would be in the public interest, he may bring an action in the name of the Commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice.” 73 P.S. § 201-4 (emphasis added). The definition of a “person” under the UTPCPL does not contain a restriction on where such “natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and other legal entities” must be located to be subject to a proceeding under that law. 73 P.S. § 201-2(2).

Regardless of where a business is based, engaging in trade or commerce which affects residents of the Commonwealth subjects said business to the requirements of the UTPCPL. Therefore, an out-of-state business has the same obligations as a business based in the Commonwealth in relation to these regulations, except where explicitly exempted therefrom, and the enforcement mechanism is the same for all of these businesses: the UTPCPL.

8. Comment: IRRRC requested that the OAG explain how it will implement and administer the revised definition of “advertisement” in conjunction with the entirety of Chapter 301. (1)

Response: As stated in RAF #10, the provisions proposed to be added to the definition of “Advertisement” in the proposed rulemaking are intended to make explicit that advertisements for the sale of motor vehicles via electronic means are subject to the Automotive Industry Trade Practices regulations. As a practical matter, the OAG has always considered online advertisements for motor vehicles to fall within the definition as presently written, and the OAG is not aware of

any serious contention from members of the regulated community to the contrary. Simply put, the OAG will implement and administer this revised definition by continuing to operate as usual. This amendment merely modernizes the regulations and their intent.

9. Comment: Commentators and IRRC have questioned the rationale for the change of the title Part V of Title 37 from “Bureau of Consumer Protection” to “Unfair Trade Practices.” The OAG has been asked to either retain the existing title or explain the rationale for the proposed change. **(1) (5) (9)**

Response: The OAG did not intend for this change of title to be included in its proposed rulemaking and will retain the existing title of Part V in the final-form rulemaking.

10. Comment: Commentators and IRRC have expressed concern over the proposed addition to Subsection 5 including a seventh condition which must be disclosed by an advertiser or seller of a motor vehicle, “Any other material condition which substantially impairs vehicle use or safety.” IRRC and commentators have stated that the present language is vague and the OAG has been asked to clarify this condition in the final rulemaking. IRRC has further asked the OAG to explain the need for this new requirement and provide examples of the types of problems they have encountered in the administration of Chapter 301. **(1) (5) (8) (9) (11) (12)**

Response: The OAG has decided to remove this proposed addition to Subsection 5 in the final-form rulemaking but encourages the regulated community to, as always, err on the side of full disclosure and fair dealing with Pennsylvania consumers.

11. Comment: Representative Nelson, IRRC and the Pennsylvania Automotive Association have posed questions about the “inspection” of motor vehicles within thirty days after entering into the inventory of a motor vehicle dealer and, thereafter, within thirty days after each time the vehicle accumulates 500 miles while in the inventory of the selling motor vehicle dealer. Specifically, IRRC has inquired how these requirements will be administered and enforced; what sort of documentation would be provided to the owner and/or eventual buyer of the vehicle; what action must be taken and what sort of documentation must be provided to the owner or buyer if a deficiency is discovered; and whether an accompanying emissions inspection would also be required. IRRC further asked the OAG to explain why annual inspections required by PennDOT are not sufficient for in-stock vehicles which accumulate 500 miles. Representative Nelson asserts that a 500-mile re-inspection requirement “far exceeds Pennsylvania’s current annual inspection standard...raises larger questions on the effectiveness of annual inspections and lacks a factually supported public safety justification.” The Pennsylvania Automotive Association echoes these concerns and further states that this requirement will result in multiple, unneeded inspections, increasing costs to consumers and resulting in delivery delays. **(1) (2) (11)**

Response: As a preliminary matter, the OAG would note that the rulemaking intends to use the term “inspect” in its ordinary meaning (i.e., to take a careful look) and not, in itself, to refer to a PennDOT safety inspection. However, given that one of the conditions which must be disclosed under Subsection 5 is whether a vehicle is unable to pass State inspection, in a practical sense, taking a careful look for all listed conditions would necessarily require the completion of a PennDOT safety inspection. In the event that a certified inspection mechanic does perform a

PennDOT safety inspection, the dealership is required to maintain either an MV431 or MV480 form, as applicable. This form may be requested to be viewed by the potential buyer of a motor vehicle or, in the course of an investigation, the OAG may request to view this record. This is one potential means by which the OAG could administer and enforce Subsection 5.1. If a deficiency is discovered, the rulemaking contains new Subsection 9.1 to Section 301.4(a). This new subsection would direct that the written contract—which a motor vehicle dealer must already provide to the buyer of a motor vehicle under Section 301.4(a)(1)—includes clearly and conspicuously on its face, information that the vehicle is sold “As-Is,” followed by a list of the identified deficiencies.

While the OAG would encourage motor vehicle dealers to inform consumers of the emissions generated by motor vehicles which are advertised or offered for sale, it is not the intent of this rulemaking to require an accompanying emissions inspection. The OAG intends to better inform consumers of more directly potentially unsafe conditions present in motor vehicles which are advertised to them.

The OAG is glad to receive the support of commentators including the Pennsylvania Automotive Association directing that all motor vehicles should be inspected not more than thirty days after coming into the inventory of the selling motor vehicle dealer or advertiser. The OAG understands this to be a standard practice in the industry and aims by its inclusion in this rulemaking to better be able to enforce the UTPCPL against unscrupulous motor vehicle dealers via the means discussed herein. To address the so-called “500-Mile Rule,” the OAG has considered the comments and concerns presented to it and has modified this provision in its final-form rulemaking. The provision now directs that a motor vehicle which accumulates 500 miles while in the inventory of the dealer must be inspected (in the ordinary meaning of the word) “for all conditions listed in 37 Pa. Code § 301.2(5), except § 301.2(5)(iii).” Furthermore, in recognition that the remaining conditions for which these motor vehicles will need to be inspected for are conditions which will be readily apparent to individuals who are acquainted with the sale of motor vehicles but are not necessarily certified inspection mechanics, the provision has been further modified to state that merely the selling motor vehicle dealer is required to inspect for them.

At the public hearing held by the OAG on December 13, 2023, at which the OAG sought answers intended to better aid us in refining this part of the rulemaking in particular, Pennsylvania Automotive Association Vice President of Legal and Regulatory Affairs Chad Marsar was very helpful in providing certain facts and figures building upon those provided in their initial comment. In summary: The average new vehicle will be in a dealer’s inventory for approximately 70 days prior to a retail sale, during which time it will accumulate less than 250 miles. The figures are similar for the average used vehicle, which will be in a dealer’s inventory for approximately 60 days prior to a retail sale, during which time it will accumulate less than 250 miles. Based on a survey of Pennsylvania Automotive Association members, every new vehicle dealer will have vehicles in their inventory which will exceed 500 miles—on average 27 vehicles, which most often are service loaner vehicles, demonstrator vehicles and dealership shuttle vehicles for employees and customers.

The OAG acknowledges that this is a relatively small number of vehicles per dealership—just over two dozen on average; however, given the number of motor vehicle dealers in the

Commonwealth, this figure becomes more substantial. It is precisely these motor vehicles which the OAG is particularly concerned with guaranteeing consumers timely, accurate information on their roadworthiness. Additionally, the five conditions of Subsection (5) for which this handful of vehicles would be required to be inspected under the reworked provision are patently obvious conditions which should not take substantial time or labor to discover. In the event that one of these conditions is determined to be present, the motor vehicle dealer may simply note such condition on the written contract as set forth above.

It is not the intent of the OAG to second-guess the expert determination of PennDOT that full-scale safety inspections are properly conducted annually. Merely directing motor vehicle dealers to take a careful look for certain specified conditions in a limited category of vehicles in their inventory should in no way be construed to suggest otherwise.

12. Comment: Representative Nelson and several interested groups expressed some concern that the proposed rulemaking “could have an unintended negative impact on the process by which vehicles that have been deemed total losses are auctioned for salvage, potentially resulting unnecessarily in increased systemic costs without commensurate benefit.” Representative Nelson notes the already “well-developed disclosure notification process” in place in the salvage vehicle industry. In its comment letter, IRRC encouraged the OAG to consider including language in the final-form regulation exempting certain transactions. (1) (2) (3) (4) (6) (7) (14) (15)

Response: The OAG agrees that greater specificity is warranted in the applicability of the new Subsection 5.1 concerning the inspection of motor vehicles to be advertised or offered for sale. To that end, in the revised final-form regulation, the OAG has expanded the language “Except as to a sale of a motor vehicle to another motor vehicle dealer...” into (5.1)(b), which exempts, among other categories discussed herein, the advertising or offering for sale of a motor vehicle “bearing a certificate of salvage and/or a nonrepairable vehicle certificate.” The sale of salvaged vehicles has sufficient disclosures and guidelines in place as-is, particularly when considering the relative sophistication of participants in the market for such vehicles. The OAG believes that this clear exemption should allay the concerns of salvage operators.

13. Comment: Related to the comment above, several interested groups have expressed concern of the possible applicability of the rulemaking to the varied forms of motor vehicle auctions, be they for the sale of damaged or undamaged vehicles; for vehicles either owned by the auctioneer or by third parties utilizing the auto auction as an intermediary; or for vehicles auctioned to persons other than motor vehicle dealers, for example dismantlers. Noting the significant interest this facet of the rulemaking has generated, IRRC states that there is a belief that “this language [in Subsection 5.1] would require [the motor vehicle auction industry] to provide the disclosures of Subsection (5) and perform the inspections required by the new subsection.” IRRC requested that the OAG provide a detailed explanation in the RAF and this document of how this new language will be applied to this industry and that Subsection 5.1 be amended to clarify the OAG’s intent. The OAG has also been asked to explain how this rulemaking will apply to auctions involving the sale of federal and state government-owned vehicles, vehicles sold by estate auctioneers that sell multiple vehicles per year, vehicles sold at auction to customers for their own use, and out-of-state auto auction businesses that sell to Pennsylvania residents. (1) (3) (4) (5) (6) (8) (9) (10) (12) (14)

Response: The OAG agrees that greater specificity is warranted in the applicability of the new Subsection 5.1 concerning the inspection of motor vehicles to be advertised or offered for sale. To that end, in the revised final-form regulation, the OAG has expanded the language “Except as to a sale of a motor vehicle to another motor vehicle dealer...” into (5.1)(b), which exempts, among other categories discussed herein, the advertising or offering for sale of a motor vehicle “to another motor vehicle dealer” or “pursuant to a duly authorized vehicle auction license.” As several commentators have noted, the participants in motor vehicle auctions are by and large sophisticated buyers and sellers who have created clear guidelines to self-regulate the transactions in which they participate and/or facilitate the sale of hundreds of thousands of motor vehicles. In the interest of greater clarity to address what IRRC understands to be “a misunderstanding of the applicability of this language,” the OAG has expanded the exemption in Subsection 5.1 to clarify our intent not to include vehicles sold at auction within the scope of the new language. To directly address IRRC’s question regarding how this rulemaking will apply to the myriad of vehicle auctions, the answer is that it will not.

The OAG would further note that the definition of “Dealer or motor vehicle dealer” in the Automotive Industry Trade Practices regulations as promulgated in 1978 only includes persons who are “engaged in the business of selling, offering for sale or negotiating the **retail sale** of motor vehicles.” 37 Pa. Code § 301.1 (emphasis added). The intent and explicit purpose of these regulations has always been greater clarity, and thereby fairness, in the advertisement and offering for sale of motor vehicles to the average end consumer. As a legal and practical matter, these regulations would not apply to the advertisement, offering for sale, or sale of motor vehicles sold at wholesale.

14. Comment: Some commentators have suggested the inclusion of certain broader language to the rulemaking which states “This Chapter does not apply to sales of motor vehicles by or through any auction whose primary business is the auction of vehicles on behalf of third parties” in order to “recognize the distinction between wholesale, dealer-only auto auction transactions and those between retail dealer and consumer.” (5) (8) (9)

Response: As noted above, the Automotive Industry Trade Practices regulations only apply to the retail sale of motor vehicles to Pennsylvania consumers. The OAG asserts that this sweeping language is unnecessary and redundant.

15. Comment: Vroom Automotive, LLC, submitted a comment raising concerns about the applicability of the new Subsection 5.1 to the relatively novel business of online-only motor vehicle retail sales which sell to consumers nationwide. In many circumstances, these vehicles may be located outside the Commonwealth until the consumer has completed the purchase, at which point they receive the motor vehicle via home delivery. More specifically, they raised the possibility that the rulemaking “could be interpreted as requiring any dealer (including out-of-state dealers) to engage PA-certified inspection mechanics even for vehicle inventory located outside of the Commonwealth and to carry out such inspections within 30 days of bringing the vehicle into their inventory, before knowing whether the ultimate purchaser will be a Pennsylvania resident.” Vroom suggests that the proposed rulemaking be modified to either apply Subsection 5.1 only to vehicles located in the Commonwealth at the time of advertising and that are offered for sale by Pennsylvania dealers or to otherwise clarify that out-of-state dealers must comply with the

inspection requirements of the dealer's state prior to completing the sale of motor vehicles to Pennsylvania residents. (13)

Response: The OAG acknowledges that Subsection 5.1 as initially proposed could lead one to the interpretation set forth by Vroom, which could result in additional, unintended burdens for certain out-of-state dealers utilizing novel business methods to engage in motor vehicle retail sales. The OAG has considered the modifications suggested by Vroom. To the latter, each state has a unique approach, if any, to vehicle safety inspections. Even if the state in which an out-of-state dealer maintains inventory has an inspection program, there is a thorny question of whether it would be proper or possible to utilize Pennsylvania regulations to dictate compliance with the laws of a different jurisdiction. The OAG concluded that the former suggestion is preferable, and to that end the OAG has expanded the language "Except as to a sale of a motor vehicle to another motor vehicle dealer..." into (5.1)(b), which exempts, among other categories discussed herein, the advertising or offering for sale of a motor vehicle "located outside the Commonwealth of Pennsylvania at all times during which it is advertised or offered for sale." The OAG asserts that this exemption addresses a situation it considers to be uncommon and not granting some undue benefit to motor vehicle dealers who maintain inventory outside the Commonwealth given, as discussed herein, the relatively minor amount of additional work contemplated by this rulemaking.

16. Comment: IRRC suggested that it would be beneficial for the OAG to conduct a second hearing on this matter before submitting the final-form regulation, or to otherwise work closely with the regulated community to gain a better understanding of how their businesses operate and how this proposed rulemaking applies to and would impact them. IRRC also suggested that the OAG issue an Advanced Notice of Final Rulemaking to solicit additional input. (1)

Response: Following the closing of the public comment period and the receipt of IRRC's comments and suggestions, the OAG began to craft this final-form rulemaking. In so doing, certain questions arose, particularly in regard to the "500-Mile Rule." To solicit further input from interested parties in general and to these specific questions, the OAG published a public hearing notice in the *Pennsylvania Bulletin* on November 11, 2023. The hearing was held on December 13, 2023 at the OAG's Harrisburg office in Strawberry Square, at which Chad Marsar, Vice President of Legal and Regulatory Affairs for the Pennsylvania Automotive Association provided testimony which was instrumental in drafting this final-form rulemaking.

The OAG has determined that the rulemaking in its present form has responded to the concerns of the public and the regulated community such that an Advanced Notice of Final Rulemaking is not necessary.

Annex A
TITLE 37. LAW

PART V. ~~BU~~BUREAU OF CONSUMER PROTECTION~~UNFAIR TRADE PRACTICES~~

CHAPTER 301. AUTOMOTIVE INDUSTRY TRADE PRACTICES

§ 301.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Advertisement—An oral, written or graphic statement which offers for sale a particular motor vehicle or motor vehicle goods and services or which indicates the availability of a motor vehicle or motor vehicle goods and services, including a statement or representations made in a newspaper, periodical, pamphlet, circular, other publication or on radio or television; contained in a notice, handbill, sign, billboard, poster, bill, catalog or letter; **placed on a website, in a mobile application, on a social media outlet, or on any other electronic platform;** or printed on or contained in a tag or label which is attached to merchandise.

§301.2. Advertising and sales presentation requirements.

With respect to an advertisement or sales presentation offering or making available for sale a new or used motor vehicle or maintenance service or repair on a new or used motor vehicle, the following will be considered unfair methods of competition and unfair or deceptive acts or practices:

(5) The representation in an advertisement or sales presentation that a motor vehicle or motor vehicle goods or services are of a particular style, model, standard, quality or grade if they are of another or if the representation conflicts with a written notice or disclosure required under this chapter. For the purposes of this chapter, a motor vehicle which is offered for sale is represented to be roadworthy, and the advertiser or seller shall disclose **in writing** prior to sale the following conditions if the advertiser or seller knows or should know that the conditions exist in the motor vehicle:

- (i) Frame bent, cracked or twisted.
- (ii) Engine block or head cracked.
- (iii) Vehicle unable to pass State inspection.
- (iv) Transmission damaged, defective or so deteriorated as to require replacement.
- (v) Vehicle flood damaged.
- (vi) Differential damaged, defective or so deteriorated as to require replacement.

~~(vii) Any other material condition which substantially impairs vehicle use or safety.~~

~~(5.1) (a) Except as to a sale of a motor vehicle to another motor vehicle dealer, †The advertisement or offering of a motor vehicle for sale unless a certified inspection mechanic designated by the selling motor vehicle dealer has inspected the motor vehicle in accordance with 67 Pa. Code § 175:~~

~~(i) A CERTIFIED INSPECTION MECHANIC DESIGNATED BY THE SELLING MOTOR VEHICLE DEALER HAS INSPECTED THE MOTOR VEHICLE not more than thirty days after the motor vehicle comes into the inventory of the selling motor vehicle dealer or advertiser FOR ALL CONDITIONS LISTED IN 37 PA. CODE § 301.2(5); and~~

~~(ii) THE SELLING MOTOR VEHICLE DEALER HAS INSPECTED THE MOTOR VEHICLE not more than thirty days after each time the motor vehicle accumulates 500 miles while in the inventory of the selling motor vehicle dealer or advertiser FOR ALL CONDITIONS LISTED IN 37 PA. CODE § 302.5, EXCEPT § 301.2(5)(iii).~~

~~(b) THIS SECTION SHALL NOT APPLY TO THE ADVERTISEMENT OR OFFERING FOR SALE OF A MOTOR VEHICLE:~~

~~(i) TO ANOTHER MOTOR VEHICLE DEALER;~~

~~(ii) PURSUANT TO A DULY AUTHORIZED VEHICLE AUCTION LICENSE;~~

~~(iii) BEARING A CERTIFICATE OF SALVAGE AND/OR A NONREPAIRABLE VEHICLE CERTIFICATE; OR~~

~~(iv) LOCATED OUTSIDE THE COMMONWEALTH OF PENNSYLVANIA AT ALL TIMES DURING WHICH IT IS ADVERTISED OR OFFERED FOR SALE.~~

(6) The making of a representation or statement of a fact in an advertisement or sales presentation if the advertiser or salesperson knows or should know that the representation or statement is false and misleading or if the advertiser or salesperson does not have sufficient information upon which a reasonable belief in the truth of the representation could be based.

§ 301.4. General provisions—motor vehicle dealer.

(a) With regard to a motor vehicle dealer, the following will be considered unfair methods of competition and unfair or deceptive acts or practices:

(9.1) In any instance where a motor vehicle is not roadworthy at the time the motor vehicle is offered for sale, using the term “AS IS” as set forth in this section does not satisfy the written disclosure requirement in Section 301.2(5) of this chapter. The written contract, required under Section 301.4(a)(1) of this chapter for the sale of a motor vehicle, must instead include, in a clear and conspicuous manner on the face of the document, information that the motor vehicle is sold “As-Is” and a list of the conditions, as set forth in Section 301.2(5) of this chapter, present in the motor vehicle.

RECEIVED

From: [Shovlin, Ryan](#)
To: [Wolfe, Mark W.](#)
Cc: [Abel, John](#)
Subject: [EXTERNAL] RE: FINAL-FORM RULEMAKING - Office of Attorney General
Date: Tuesday, February 6, 2024 2:15:38 PM
Attachments: [image001.png](#)

Independent Regulatory
Review Commission

February 6, 2024

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Received. Thank you.

-r

Ryan P. Shovlin
Executive Director & Legal Counsel
Pennsylvania Senate Judiciary Committee
Senator Lisa Baker, Chairwoman
173 Main Capitol Building | Harrisburg, PA 17120-3020
Phone: 717-787-7428

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Tuesday, February 6, 2024 11:27 AM
To: Shovlin, Ryan <rshovlin@pasen.gov>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: FINAL-FORM RULEMAKING - Office of Attorney General
Importance: High

ⓘ CAUTION : External Email ⓘ

Good morning Ryan—

Per my prior communication, please see attached a final-form rulemaking amending the Office of Attorney General's Automotive Industry Trade Practices regulations and a Comment & Response document addressing all public comments received in response to the proposed rulemaking last summer. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Senator Baker so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Thank you,
Mark

Mark W. Wolfe
Deputy Attorney General
Pennsylvania Office of Attorney General

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Independent Regulatory
Review Commission

February 6, 2024

Bureau of Consumer Protection
Strawberry Square | 15th Floor
Harrisburg, Pennsylvania 17120
Office (717) 787.9707 | Desk (717) 772.3558
mwolfe@attorneygeneral.gov

From: Shovlin, Ryan <rshovlin@pasen.gov>
Sent: Thursday, January 4, 2024 3:43 PM
To: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: [EXTERNAL] RE: PROPOSED REGULATION - Office of Attorney General

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Mark—

Thank you for reaching out. Yes, I am the appropriate point of contact for Senator Baker and email is perfectly fine.

Respectfully,
Ryan

Ryan P. Shovlin
Executive Director & Legal Counsel
Pennsylvania Senate Judiciary Committee
Senator Lisa Baker, Chairwoman
173 Main Capitol Building | Harrisburg, PA 17120-3020
Phone: 717-787-7428

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Thursday, January 4, 2024 3:39 PM
To: Shovlin, Ryan <rshovlin@pasen.gov>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: FW: PROPOSED REGULATION - Office of Attorney General
Importance: High

⦿ CAUTION : External Email ⦿

Good afternoon Ryan:

The Office of Attorney General is preparing the final-form version of the attached proposed rulemaking following the receipt and consideration of public comments. As with the delivery of the initial proposal, the final-form rulemaking must be delivered to the Chairs of the House and Senate Judiciary Committees and IRRC on the same day. It is the intent of the OAG to deliver our final-form rulemaking on Tuesday, **February 6**. In advance of then, I was hoping to confirm the following:

- Whether you are still the appropriate point of contact to deliver the rulemaking to Sen. Baker; and
- Whether email is still the preferred means of delivery.

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Thank you! Please let me know if you have any questions or concerns.

Independent Regulatory
Review Commission

February 6, 2024

Sincerely,
Mark

From: Wolfe, Mark W.
Sent: Friday, April 28, 2023 8:47 AM
To: Shovlin, Ryan
Cc: Abel, John
Subject: PROPOSED REGULATION - Office of Attorney General
Importance: High

Dear Ryan:

Per my prior communication, please see attached a proposed regulation amending the Office of Attorney General's Automotive Industry Trade Practices regulations. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, the LRB and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Senator Baker so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Thank you,
Mark Wolfe

Mark W. Wolfe
Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
Office: (717) 787-9707
Direct: (717) 772-3558
Cell: (717) 562-2922
mwolfe@attorneygeneral.gov

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From: [Clawges, Timothy](#)
To: [Wolfe, Mark W.](#); [Vitale, David](#)
Cc: [Abel, John](#)
Subject: [EXTERNAL] RE: FINAL-FORM RULEMAKING - Office of Attorney General
Date: Tuesday, February 6, 2024 12:08:14 PM
Attachments: [image001.png](#)

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February 6, 2024

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received

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Tuesday, February 6, 2024 11:27 AM
To: Clawges, Timothy <TClawges@pahouse.net>; Vitale, David <DVitale@pahouse.net>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: FINAL-FORM RULEMAKING - Office of Attorney General
Importance: High

Good morning Timothy & Dave—

Per my prior communication, please see attached a final-form rulemaking amending the Office of Attorney General's Automotive Industry Trade Practices regulations and a Comment & Response document addressing all public comments received in response to the proposed rulemaking last summer. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Chairman Briggs so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Thank you,
Mark



Mark W. Wolfe
Deputy Attorney General
Pennsylvania Office of Attorney General
Bureau of Consumer Protection
Strawberry Square | 15th Floor
Harrisburg, Pennsylvania 17120
Office (717) 787.9707 | Desk (717) 772.3558
mwolfe@attorneygeneral.gov

From: Clawges, Timothy <TClawges@pahouse.net>
Sent: Tuesday, January 9, 2024 10:05 AM
To: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>

Cc: Abel, John <jabel@attorneygeneral.gov>

Subject: [EXTERNAL] RE: PROPOSED REGULATION - Office of Attorney General

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Thank you for reaching out in advance.

Yes I am the appropriate point of contact for delivery of the rulemaking for Chairman Briggs, and yes email is fine as a method of delivery. You may also want to forward the rulemaking to Dave Vitale, our legal counsel. He email is DVitale@pahouse.net

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February 6, 2024

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>

Sent: Thursday, January 4, 2024 3:35 PM

To: Clawges, Timothy <TClawges@pahouse.net>

Cc: Abel, John <jabel@attorneygeneral.gov>

Subject: FW: PROPOSED REGULATION - Office of Attorney General

Importance: High

Good afternoon Timothy:

The Office of Attorney General is preparing the final-form version of the attached proposed rulemaking following the receipt and consideration of public comments. As with the delivery of the initial proposal, the final-form rulemaking must be delivered to the Chairs of the House and Senate Judiciary Committees and IRRC on the same day. It is the intent of the OAG to deliver our final-form rulemaking on the next session day, Tuesday, **February 6**. In advance of then, I was hoping to confirm the following:

- Whether you are still the appropriate point of contact to deliver the rulemaking to Rep. Briggs; and
- Whether email is still the preferred means of delivery.

Thank you for your time. Please let me know if you have any questions or concerns.

Sincerely,
Mark

From: Wolfe, Mark W.

Sent: Friday, April 28, 2023 8:47 AM

To: 'TClawges@pahouse.net'

Cc: Abel, John

Subject: PROPOSED REGULATION - Office of Attorney General

RECEIVED

Importance: High

Independent Regulatory
Review Commission

February 6, 2024

Dear Timothy:

Per my prior communication, please see attached a proposed regulation amending the Office of Attorney General's Automotive Industry Trade Practices regulations. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, the LRB and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Representative Briggs so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Sincerely,
Mark Wolfe

Mark W. Wolfe
Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
Office: (717) 787-9707
Direct: (717) 772-3558
Cell: (717) 562-2922
mwolfe@attorneygeneral.gov

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From: [Steven Smith](#)
To: [Wolfe, Mark W.](#)
Cc: [Abel, John](#)
Subject: [EXTERNAL] RE: [EXTERNAL]: FINAL-FORM RULEMAKING - Office of Attorney General
Date: Tuesday, February 6, 2024 11:30:41 AM
Attachments: [image001.png](#)

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February 6, 2024

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Received. Thank you.

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Tuesday, February 6, 2024 11:27 AM
To: Steven Smith <ssmith@pahousegop.com>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: [EXTERNAL]: FINAL-FORM RULEMAKING - Office of Attorney General
Importance: High

You don't often get email from mwolfe@attorneygeneral.gov. [Learn why this is important](#)

Good morning Steve—

Per my prior communication, please see attached a final-form rulemaking amending the Office of Attorney General's Automotive Industry Trade Practices regulations and a Comment & Response document addressing all public comments received in response to the proposed rulemaking last summer. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Representative Kauffman so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Thank you,
Mark



Mark W. Wolfe

Deputy Attorney General
Pennsylvania Office of Attorney General
Bureau of Consumer Protection
Strawberry Square | 15th Floor
Harrisburg, Pennsylvania 17120
Office (717) 787.9707 | Desk (717) 772.3558
mwolfe@attorneygeneral.gov

From: Thomas Dymek <Tdymek@pahousegop.com>

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Sent: Monday, January 8, 2024 12:52 PM

To: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>

Cc: Abel, John <jabel@attorneygeneral.gov>; Steven Smith <Ssmith@pahousegop.com>

February 6, 2024

Subject: [EXTERNAL] RE: [EXTERNAL]: FW: PROPOSED REGULATION - Office of Attorney General

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Mark,

Thanks for your email. I recommend you send to Steve Smith. Steve has taken over as executive director for the House Judiciary Committee, Republican staff. I copied Steve on this email. Thanks.

Tom

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>

Sent: Thursday, January 4, 2024 3:32 PM

To: Thomas Dymek <Tdymek@pahousegop.com>

Cc: Abel, John <jabel@attorneygeneral.gov>

Subject: [EXTERNAL]: FW: PROPOSED REGULATION - Office of Attorney General

Importance: High

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Good afternoon Mr. Dymek:

The Office of Attorney General is preparing the final-form version of the attached proposed rulemaking following the receipt and consideration of public comments. As with the delivery of the initial proposal, the final-form rulemaking must be delivered to the Chairs of the House and Senate Judiciary Committees and IRRC on the same day. It is the intent of the OAG to deliver our final-form rulemaking on the next session day, Tuesday, **February 6**. In advance of then, I was hoping to confirm the following:

- Whether you are still the appropriate point of contact to deliver the rulemaking to Rep. Kauffman; and
- Whether email is still the preferred means of delivery.

Thank you for your time. Please let me know if you have any questions or concerns.

Sincerely,

Mark

From: Wolfe, Mark W.

Sent: Friday, April 28, 2023 8:46 AM

To: 'tdymek@pahousegop.com'

Cc: Abel, John

RECEIVED

Subject: PROPOSED REGULATION - Office of Attorney General
Importance: High

Independent Regulatory
Review Commission

February 6, 2024

Dear Mr. Dymek:

Per my prior communication, please see attached a proposed regulation amending the Office of Attorney General's Automotive Industry Trade Practices regulations. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, the LRB and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Representative Kauffman so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Sincerely,
Mark Wolfe

Mark W. Wolfe
Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
Office: (717) 787-9707
Direct: (717) 772-3558
Cell: (717) 562-2922
mwolfe@attorneygeneral.gov

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From: [Smith, Timothy](#)
To: [Wolfe, Mark W.](#)
Cc: [Abel, John](#)
Subject: [EXTERNAL] RE: FINAL-FORM RULEMAKING - Office of Attorney General
Date: Tuesday, February 6, 2024 12:07:49 PM
Attachments: [image001.png](#)

Independent Regulatory
Review Commission
February 6, 2024

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Mark,

On behalf of Senator Santarsiero, I acknowledge that we have received a copy of the Office of Attorney General's Automotive Industry Trade Practices' regulations and the Comment & Response document.

Thank you,
Tim

Timothy P. Smith
Democratic Executive Director and Legal Counsel
Pennsylvania Senate Judiciary Committee
Chairman Steve Santarsiero
(717) 787-7305

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Tuesday, February 6, 2024 11:27 AM
To: Smith, Timothy <Timothy.Smith@pasenate.com>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: FINAL-FORM RULEMAKING - Office of Attorney General
Importance: High

EXTERNAL EMAIL

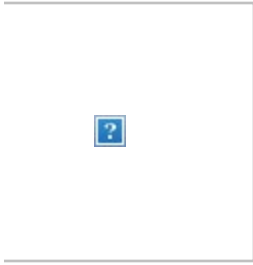
Good morning Timothy—

Per my prior communication, please see attached a final-form rulemaking amending the Office of Attorney General's Automotive Industry Trade Practices regulations and a Comment & Response document addressing all public comments received in response to the proposed rulemaking last summer. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Senator Santarsiero so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Thank you,

RECEIVED

Mark



Mark W. Wolfe

Deputy Attorney General
Pennsylvania Office of Attorney General
Bureau of Consumer Protection
Strawberry Square | 15th Floor
Harrisburg, Pennsylvania 17120
Office (717) 787.9707 | Desk (717) 772.3558
mwolfe@attorneygeneral.gov

Independent Regulatory
Review Commission

February 6, 2024

From: Smith, Timothy <Timothy.Smith@pasenate.com>
Sent: Wednesday, January 17, 2024 3:59 PM
To: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: RE: [EXTERNAL] RE: PROPOSED REGULATION - Office of Attorney General

Mark,

Yes, I am still the point of contact for Sen. Santarsiero and email is the preferred means of delivery.

Thanks,
Tim

Timothy P. Smith
Democratic Executive Director and Legal Counsel
Pennsylvania Senate Judiciary Committee
Chairman Steve Santarsiero
(717) 787-7305

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Wednesday, January 17, 2024 10:25 AM
To: Smith, Timothy <Timothy.Smith@pasenate.com>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: RE: [EXTERNAL] RE: PROPOSED REGULATION - Office of Attorney General

EXTERNAL EMAIL

Good afternoon Timothy:

The Office of Attorney General is preparing the final-form version of the attached proposed rulemaking following the receipt and consideration of public comments. As with the delivery of the initial proposal, the final-form rulemaking must be delivered to the Chairs of the House and Senate Judiciary Committees and IRRC on the same day. It is the intent of the OAG to deliver our final-form rulemaking on Tuesday, **February 6**. In advance of then, I was hoping to confirm the following:

- Whether you are still the appropriate point of contact to deliver the rulemaking to Sen.

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- Santarsiero; and
- Whether email is still the preferred means of delivery.

Independent Regulatory
Review Commission
February 6, 2024

Thank you! Please let me know if you have any questions or concerns.

Sincerely,
Mark

From: Smith, Timothy <Timothy.Smith@pasenate.com>
Sent: Friday, April 28, 2023 9:06 AM
To: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Cc: Abel, John <jabel@attorneygeneral.gov>; Deery, Michael <Michael.Deery@pasenate.com>
Subject: [EXTERNAL] RE: PROPOSED REGULATION - Office of Attorney General

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Mark:

Mike has forwarded me a copy of the proposed regulation. Please use this email as acknowledgment that Senator Santarsiero's office has received a copy of the proposed regulation.

Thank you,

Timothy P. Smith
Democratic Executive Director and Legal Counsel
Pennsylvania Senate Judiciary Committee
Chairman Steve Santarsiero
(717) 787-7305

From: Deery, Michael <Michael.Deery@pasenate.com>
Sent: Friday, April 28, 2023 8:57 AM
To: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Cc: Abel, John <jabel@attorneygeneral.gov>; Smith, Timothy <Timothy.Smith@pasenate.com>
Subject: RE: PROPOSED REGULATION - Office of Attorney General

Thanks mark. Adding Tim smith. He is the new ED for Senator Judiciary.

From: Wolfe, Mark W. <mwolfe@attorneygeneral.gov>
Sent: Friday, April 28, 2023 8:47 AM
To: Deery, Michael <Michael.Deery@pasenate.com>
Cc: Abel, John <jabel@attorneygeneral.gov>
Subject: PROPOSED REGULATION - Office of Attorney General
Importance: High

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Independent Regulatory
Review Commission

| EXTERNAL EMAIL |

February 6, 2024

Dear Mike:

Per my prior communication, please see attached a proposed regulation amending the Office of Attorney General's Automotive Industry Trade Practices regulations. Under IRRC rules for the delivery of regulations, this proposal must be delivered to the Chairs of the appropriate committees in the General Assembly, the LRB and, finally, IRRC on the same day. With that in mind, I kindly ask that you acknowledge your receipt of this email on behalf of Senator Santarsiero so that I can attach your response to my final transmittal to IRRC. Please don't hesitate to reach out if you have any questions.

Sincerely,
Mark Wolfe

Mark W. Wolfe
Deputy Attorney General
Pennsylvania Office of Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
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