

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date 12/13/2022</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Trans 138 - Motor Vehicle Auction Dealers</p>	
<p>4. Subject Motor vehicle auction dealers</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected N/A</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input checked="" type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input checked="" type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$N/A</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule In 2021, five plaintiffs representing Wisconsin motor vehicle auctions filed an injunction to prevent the department from implementing a 2018 policy in which the department prohibited out-of-state customers from bidding at auctions until their buyer's license application was approved by the department. An order from the Jefferson County Circuit Court, in the case, 21CV172, issued January 11, 2022, prohibited the department from implementing the 2018 policy against the named plaintiffs. Instead, the plaintiffs may operate under a loophole that allows buyers and to bid at auctions while the department reviews their application for a license. The department has continued to enforce the 2018 policy against auctions not involved in the injunction. This has created an uneven playing field for auctions and buyers, leading to potential adverse economic impacts to businesses without fully addressing the problem of illegal vehicle sales.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. People looking to buy/bid on vehicles at Wisconsin auctions; members of WATDA (Wisconsin Auto and Truck Dealers Association and ADAMM (Auto Dealers Association of Mega Milwaukee)</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. N/A</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) Plaintiffs in 21CV172 are able to operate under a 2004 department policy that allows bidders to circumvent the wait period and bid on vehicles while waiting for their application for a buyer's license to be approved. Buyers at all other auctions must wait until they are issued a valid license to participate in those auctions. As a result, auctions that were not involved in 21CV172 have seen a decrease in attendance at auctions, equating to a loss of sales. Because the department can't enforce this same policy on the 5 plaintiffs, those auctions have seen an increase in attendance and a rise in sales.</p>	

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

This rulemaking would codify the department's interpretation of "valid license," thereby closing a loophole in the licensing process. This rulemaking would ensure that all auctions are regulated in the same way, eliminating any disadvantage auctions not involved in the court case have experienced.

Since this rulemaking commenced, 2 additional auto auctions filed a lawsuit against the department in Milwaukee Circuit Court, case 22CV7001, seeking a court order that the pre-2018 policy apply to those plaintiffs as well. If this rule is not promulgated, auctions and buyers will experience regulatory uncertainty and disparate economic effects.

16. Long Range Implications of Implementing the Rule

Under this rulemaking, all buyers who are looking to participate at a Wisconsin auto auction must first be issued a valid license by the department. The department's vetting process reduces harm to consumers by vetting buyer/bid license applications before vehicles are purchased at auction. If "Dealer A" is denied a buyer's license, they could apply for a buyer's license under the name "Dealer B." While their application is being processed, Dealer B can obtain vehicles at auctions and sell them in a practice known as curbing vehicles. Curbing vehicles is unlicensed sales to consumers, which leaves consumers without protection. This harm continues while the department receives and processes the application from Dealer B. This would be the same result for anyone wanting to obtain a buyer's license and participate in these unlicensed sales.

17. Compare With Approaches Being Used by Federal Government

There is currently no federal law regulating buyer/bid licenses at vehicle auctions.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: 625 ILCS 5/5-701

(a) No person, other than a licensed new vehicle dealer, a licensed used vehicle dealer, or municipality, shall engage in this State in the business of auctioning vehicles, for more than one owner, at auction or shall offer to sell, solicit or advertise the sale of a vehicle at auction without first acquiring a commercial vehicle auctioneer license from the Secretary of State under the provisions of this Section. A vehicle auction licensee shall be entitled thereunder to sell, solicit, and advertise the sale of used vehicles belonging to others at auction.

(b) An application for a vehicle auctioneer license shall be filed with the Secretary of State, duly verified by oath, in such form as the Secretary of State..."

Iowa: Iowa Admin. Code 761-425.20 (322)

425.20(2) Retail auction sales. Any person who sells at public auction more than six vehicles in a 12-month period shall obtain the appropriate dealer's license. All certificates of title for the vehicles offered for sale at public auction shall be duly assigned to the dealer.

425.20(3) Place of business. A dealer's license issued under this rule does not require a place of business.

425.20(4) Exceptions.

a. The state of Iowa, counties, cities and other governmental subdivisions are not required to obtain a dealer's license to sell their vehicles at retail.

b. This rule does not apply to a vehicle owner, or to an auctioneer representing the owner, selling vehicles at a retail auction if the vehicles were acquired by the owner for consumer use, the vehicles are incidental to the auction, and only one owner's vehicles are sold.

Michigan: MCL s. 257.248 (5)

A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more vehicles of a type required to be titled under this act in a 12-month period unless the person obtains a dealer license from the secretary of state authorizing the carrying on or conducting of that business. A person shall not carry on or conduct the business of buying, selling, brokering, leasing, negotiating a lease, or dealing in 5 or more distressed, late model vehicles or salvageable parts to 5 or more of those vehicles in a 12-month period unless the person obtains a used or secondhand vehicle parts dealer, an automotive recycler, or a salvage pool license from the secretary of state or is an insurance company admitted to conduct business in this state. A person shall not carry on or conduct the business of buying 5 or more vehicles in a 12-month period to process into scrap metal or store or display 5 or more vehicles in a 12-

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month period as an agent or escrow agent of an insurance company unless the person obtains a dealer license from the secretary of state. A vehicle scrap metal processor that does not purchase vehicles or salvageable parts from unlicensed persons is not required to obtain a dealer license. A person from another state shall not purchase, sell, or otherwise deal in distressed, late model vehicles or salvageable parts unless the person obtains a foreign salvage vehicle dealer license from the secretary of state under section 248b.3 A person, including a dealer, shall not purchase or acquire a distressed, late model vehicle or a salvageable part through a salvage pool, auction, or broker without a license as a salvage vehicle agent. The secretary of state shall investigate and seek prosecution, if necessary, of persons allegedly conducting a business without a license.”

Minnesota: Minn. Admin. Code 7400.0900.

Subpart 1. New motor vehicles. A person who solicits, accepts, offers for sale, or sells new motor vehicles on consignment must be licensed as a new motor vehicle dealer and must have a franchise for each type of new motor vehicle sold on consignment.

Subp. 2. Used motor vehicles. A person who solicits, accepts, offers for sale, or sells used motor vehicles on consignment must be licensed as a new motor vehicle dealer, a used motor vehicle dealer, a motor vehicle wholesaler, or a motor vehicle auctioneer.

Subp. 3. Auctioneers. This part does not apply to a licensed auctioneer selling motor vehicles at an auction if, in the ordinary course of the auctioneer's business, the sale of motor vehicles is incidental to the sale of other real or personal property.

19. Contact Name	20. Contact Phone Number
Mark A. Rather Chief Dealer & Agent Section	608-264-7000

This document can be made available in alternate formats to individuals with disabilities upon request.

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ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

Buyers may participate in any one of the five plaintiffs' auctions in 21CV172 while waiting for their application for a buyer's license to be approved by the department. At all other auctions, buyers are required to wait before participating at those auctions until they are issued a valid license by the department. This rulemaking

Persons who participate in auctions will not experience implementation and compliance costs as a result of this rule. This rulemaking simply codifies the department's current practice, thus positively impacting consumers and auctions not involved in 21CV172.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

N/A

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

N/A

5. Describe the Rule's Enforcement Provisions

There will be no anticipated change to how the department currently enforces buyer licenses under ch. 218, Stats.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
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