

STATEMENT OF SCOPE

Department of Transportation

Rule No.: Trans 138

Relating to: Motor vehicle auction dealers

Rule Type: Emergency/Permanent

1. Finding/nature of emergency (Emergency Rule only):

The welfare of retail consumers in the state of Wisconsin are at risk of harm from the sale of motor vehicles from unlicensed motor vehicle dealers. Previously, the Wisconsin Department of Transportation (“department”) interpreted provisions of s. 218.34, Stats., as authorizing the department to issue motor vehicle buyer licenses only after the statutory procedure for assessing and issuing licenses has concluded, and only permits persons holding said license to bid on automobiles at an auction after the license process is completed. However, the department’s interpretation of the language in s. 218.34, Stats., and the department’s procedures have been invalidated by a recent court decision. The result is that unlicensed dealers can obtain vehicles at Wisconsin motor vehicle auctions through an existing licensing process, where applicants can bid on and purchase vehicles while their license is applied for with the department. The department is seeking a change to Wis. Admin. Code ch. Trans 138 through emergency rulemaking in order to close this loophole in the licensing process.

2. Detailed description of the objective of the proposed rule:

The objective of this proposed rule is to clarify the department’s interpretation of s. 218.34, Stats., following the Jefferson County Circuit Court’s decision in *Jefferson Mid-State Auto Auction, LLC et. al. v. Wis. Dept. of Transp.*, Case No. 21CV172 relating to provisional licensing policies. The department previously interpreted the statute as saying that it may only issue a license after the statutory procedure for assessing and issuing license has concluded and only permits persons holding said license to bid on automobiles at an auction after the license process is completed. Additionally, the department previously interpreted that provisions under s. 218.34, Stats., precluded the department from implementing anything other than what the department interpreted the statute to provide.

The Court, however, concluded that the language in s. 218.34, Stats., particularly the plain meanings of the words “valid” and “license” do not demand a singular unambiguous definition. Rather, the Court held that words as used in the statute are broad and inclusive.

Further, the Court concluded that the Legislature has not plainly and clearly mandated that the exclusive way a person bidding can be identified and then be linked to the department’s database through completion of the licensing process, nor has it prohibited the department from developing and executing procedure. The Court ordered the department’s interpretation of the statute be harmonized with the department’s policies through rulemaking in order to address serious policy concerns with commercial business practices.

Therefore, rulemaking is necessary to clarify the department's interpretation of s. 218.34, Stats., to include any conditions, limitations, or restrictions the department may deem appropriate to ensure accurate bidder identity, system integrity, fraud avoidance, and commercial efficiency.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

In 2004, the department recognized the need to implement policy consistent with the statutory requirements of s. 218.34, Stats. To this end, the department permitted motor vehicle auctions to accept bids from customers under the following conditions: 1) the auction collected a buyer's license application from the customer; 2) the auction issued a receipt of application to the customer; and 3) the auction forwarded the application to the department. This allowed customers to obtain motor vehicles at auction while the department reviewed their application and issued a license.

Over time, the department observed increases in unlicensed motor vehicle dealer sales and odometer fraud directly connected to the sale of motor vehicles allowed under the 2004 policy. To correct this trend, the department changed policy regarding buyer's licenses in 2018, prohibiting out-of-state customers from bidding at an auction until their application was reviewed and a valid license was issued by the department. In 2021, this policy was further refined to encompass all buyers, regardless of whether they were in Wisconsin or out-of-state.

In 2021, five plaintiffs representing Wisconsin motor vehicle auctions filed an injunction to prevent the department from implementing the 2018 policy. 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. 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.

This new rulemaking would codify the department's 2021 interpretation of s. 218.34, Stats., requiring all motor vehicle buyers to have been issued a valid buyer's license from the department prior to bidding on or purchasing vehicles at motor vehicle auctions.

A no-action alternative would effectively revert the department back to the original 2004 policy. The department believes this alternative is contradictory to protecting consumer welfare, as it does not address the concerns of unlawful vehicle sales outlined above.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

The department is required to promulgate a rule when interpreting an ambiguous statute under s. 227.10 (1), Stats.

Section 227.10 (1), Stats. Statements of policy and interpretations of law; discrimination prohibited

(1) Each agency shall promulgate as a rule each statement of general policy and each interpretation of a statute which it specifically adopts to govern its enforcement or administration of that statute. A statement of policy or an interpretation of a statute made in the decision of a contested case, in a private letter ruling under s. 73.035 or in an agency decision upon or disposition of a particular matter as applied to a specific set of facts does not render it a rule or constitute specific adoption of a rule and is not required

to be promulgated as a rule.

Sections 218.0114 (1) and (4), Stats., set forth the licensing requirement the legislature has adopted for entities to engage in business as a motor vehicle dealer in Wisconsin.

Sections 218.0114 (1) and (4), Stats., Licenses, how granted; agreements, filing.

(1) No motor vehicle dealer, motor vehicle wholesaler, motor vehicle salesperson, motor vehicle buyer, or sales finance company may engage in business as a motor vehicle dealer, motor vehicle wholesaler, motor vehicle salesperson, motor vehicle buyer, or sales finance company in this state without a license therefor as provided in ss. 218.0101 to 218.0163. If any motor vehicle dealer acts as a motor vehicle salesperson, he or she shall secure a motor vehicle salesperson's license in addition to a motor vehicle dealer license....

(4) Application for a license under this section shall be made to the licensor, at such time, in such form and with such information as the licensor shall require and shall be accompanied by the required fees....

Section 218.34, Stats., prohibits motor vehicle auctions from accepting bids from customers who do not possess a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license.

Section, 218.34, Stats., Purchases from a motor vehicle auction

(1) No person may purchase or submit a bid for the purchase of a motor vehicle from a motor vehicle auction unless the following conditions are satisfied:

(a) The person holds a valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license.

(b) If licensed as a motor vehicle buyer, the person bids on a vehicle for only one motor vehicle dealer at a time, and uses that dealer's funds when purchasing the vehicle.

(c) The person displays his or her valid motor vehicle dealer, motor vehicle wholesaler, or motor vehicle buyer license to the motor vehicle auction and includes his or her license number on each sheet of any bid submitted to a motor vehicle auction for the purchase of a motor vehicle or other document evidencing the purchase of a motor vehicle from a motor vehicle auction.

(2) No motor vehicle auction may accept a bid for the purchase of a motor vehicle or complete the sale transaction unless the person who submits the bid or offers to purchase a motor vehicle from the motor vehicle auction satisfies the requirements of sub. (1) and the motor vehicle auction verifies that the motor vehicle dealer license, motor vehicle wholesaler license, or motor vehicle buyer license number displayed on the person's license and included on each sheet of that person's bid or other document evidencing the purchase of a motor vehicle are identical.

(3) For each motor vehicle sold by a motor vehicle auction, the motor vehicle auction shall enter on the certificate of title, or on the form or in the automated format used to reassign the title, any information that the department requires to indicate that ownership of the vehicle was transferred by a motor vehicle auction.

Section 218.0111 (1), Stats., requires that the department be the entity to issue all motor vehicle buyer licenses.

Section 218.0111 (1), Stats., Authority of licensors

(1) The department of transportation shall issue the licenses provided for in s. 218.0114

(a) to (fm) and have supervision over the licensees in respect to all of the provisions of ss. 218.0101 to 218.0163, except that the division of banking shall have jurisdiction and control over all of the following:

(a) Matters that relate to the sale of motor vehicles on retail installment contracts and the financing and servicing of those retail installment contracts.

(b) Matters that relate to prelease agreements under s. 218.0144 and consumer leases under chs. 421 to 427 and 429.

(c) The issuance of licenses to sales finance companies.

Section 218.0152 (3), Stats., authorizes the department to promulgate rules necessary for the effective administration and enforcement of permits it issues.

Section 218.0152 (3), Stats., Rules and Regulations

(3) The licensor may promulgate such rules as it considers necessary or proper for the effective administration and enforcement of ss. 218.0101 to 218.0163, but no licensee shall be subject to examination or audit by the licensor except as provided in s. 218.0116 (5).

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule

80 hours.

6. List with description of all entities that may be affected by the proposed rule:

This rule will affect all Wisconsin motor vehicle auctions, motor vehicle salvage pool auction, motor vehicle dealers, motor vehicle wholesalers, motorcycle dealers, recreational vehicle dealers, and salvage dealers who attend auctions in this state. The rule will also affect any out-of-state motor vehicle dealers, wholesalers, and salvage dealers who attend auctions in this state.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

There are no known existing or proposed federal regulations meant to address concerns related to purchases of motor vehicles at auction.

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

Licensed motor vehicle dealer's representatives and applicants for motor vehicle buyers' licenses will likely experience a delay in their ability to participate in auctions. This may lead to a short-term impact of several weeks on licensed dealer's vehicle inventory and sales. The department does not anticipate significant economic impact to motor vehicle auctions. The department anticipates a positive economic impact to consumers by reducing the incidences of illegal motor vehicle sales.

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