

CERTIFICATE

**STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING**

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

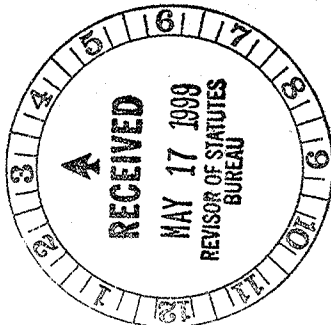
I, June Suhling, Deputy Secretary, Wisconsin Department of Regulation and Licensing and custodian of the official records of the Department of Regulation and Licensing, hereby certify that the annexed rules were duly approved and adopted by the Department of Regulation and Licensing on the 14th day of May, 1999.

I further certify that said copy has been compared by me with the original on file in this office and that the same is a true copy thereof, and of the whole of such original.

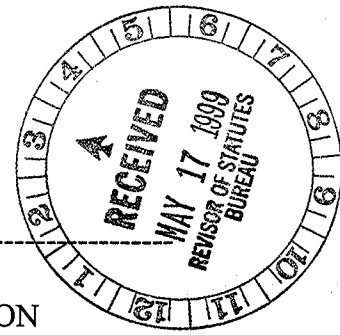
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1400 East Washington Avenue, Madison, Wisconsin this 14th day of May, 1999.

June Suhling

**June Suhling, Deputy Secretary,
Department of Regulation and
Licensing**



STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING



IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF REGULATION
DEPARTMENT OF REGULATION : AND LICENSING ADOPTING RULES
AND LICENSING : (CLEARINGHOUSE RULE 98-135)

ORDER

An order of the Department of Regulation and Licensing to *repeal* RL 121.07 (1); to *renumber* RL 121.07 (2); to *renumber and amend* RL 125.11 and 125.12; to *amend* RL 120.02 (4), 121.04 (1) (c) 3., the Note following RL 122.02, 122.04 (title), 122.04, 124.02 (5), ch. RL 125 (title), 125.02, 125.05 (title), 125.06 (title), 125.07 (title), 125.08 (title), 125.11 (title); to *repeal and recreate* RL 123.03 and RL 125.03; and to *create* RL 120.02 (12), a Note following RL 121.02 (2), 125.035, 125.08 (3) and (4), 125.11 (1), (2), (3) and (4) and 126.02 (11), (12) and (13), relating to the registration and regulation of auctioneers and auction companies.

Analysis prepared by the Department of Regulation and Licensing.

ANALYSIS

Statutes authorizing promulgation: ss. 227.11 (2) and 480.06, Stats.

Statutes interpreted: ss. 480.08, 480.10, 480.14, 480.16, 480.18, 480.20 and 480.24, Stats.

This proposed rule-making order of the Department of Regulation and Licensing primarily addresses three distinct areas respecting the registration and regulation of auctioneers and auction companies under Chapter 480, Stats., and Chapters RL 120 to 128. First, all current rules have been reviewed for the purpose of providing clarification and making technical modifications to increase their readability. Second, the advertising rules contained in Ch. RL 123, are modified to remove unnecessarily burdensome and costly requirements existing in the current provisions. Third, ch. RL 125 has been revised to set forth a required bookkeeping system for auctioneers and auction companies, whether or not they must maintain an auction trust account, in order to assure their ability to account for all auction proceeds as required under ss. 480.14 (3) and 480.18, Stats.

SECTION 1 amends the term that is defined in s. RL 120.02 (4) and changes "buyer's premium or surcharge" to "buyer's fee or surcharge."

SECTION 2 moves the definition of "trade name" from s. RL 121.07 (1) to ch. RL 120, the chapter that contains terms generally applicable throughout the rules. Registrants are permitted to use a trade name in their advertising or practice under current s. RL 121.07, as long as it is submitted in writing to the department. As the definition is proposed to be placed in ch. RL 120,

SECTION 5 repeals the definition in the current s. RL 121.07 (1), and SECTION 6 will renumber s. RL 121.07 (2) accordingly.

SECTION 3 creates a Note following s. RL 121.02, to provide the address at which applications for registration may be obtained. It also informs potential registrants that otherwise qualified applicants will be provided with reasonable accommodations, consistent with the requirements of the Americans With Disabilities Act.

SECTION 4 makes a correction to s. RL 121.04 (1) (c) 3. to provide that an auctioneer must take and pass the registration examination in order to renew a registration which expired 5 or more years prior to the renewal application, rather than "retake" a "licensing" examination.

SECTION 7 creates a Note following s. RL 122.02 to provide the address at which examination applications may be obtained. It also informs examination applicants that candidates otherwise qualified to take the examination will be provided with reasonable accommodations, consistent with the requirements of the Americans With Disabilities Act.

SECTION 8 expands current s. RL 122.04, which prohibits the receipt of unauthorized assistance on the auctioneer examination, to additionally prohibit any form of cheating or dishonesty in taking the examination. SECTION 23 would create s. RL 126.02 (11) to make it unprofessional conduct for an individual granted registration to be subsequently found to have cheated on the examination, or to have disclosed the contents of the examination to others.

SECTION 9 repeals the current requirements in ch. RL 123, that the address, telephone number and state registration numbers of auctioneers and auction companies must be included in advertisements for a specific auction. It also would repeal the requirements that auction advertisements must set forth the terms and conditions for payment at the auction, as well as the amount of any buyer's fee or surcharge that may be charged at the auction. The department believes that the current advertising requirements in the rule are unduly burdensome and costly to registrants. It should be noted that SECTION 23 would require that the terms and conditions for payment and the amount of any buyer's fee or surcharge be posted in writing at the auction itself.

SECTION 10 amends s. RL 124.02 (5) by changing "buyer's premium" to "buyer's fee."

SECTION 11 would change the title of ch. RL 125 from "Trust Accounts" to "Maintenance of Records." The proposed modifications to the chapter relate to the bookkeeping system which must be maintained by all registrants, whether or not they are required to maintain an auction trust account.

SECTION 12 deletes the reference to "principal" in the definition of "trust funds" of s. RL 125.02, as it is unnecessary. A "principal" is already included in the phrase "any other person," but the current language may inappropriately suggest there is a distinction between the two for trust account purposes.

SECTION 13 describes the information to be provided on an “account summary sheet” which would be required of registrants who do not maintain an auction trust account. This provision assures that registrants will be able to meet the statutory requirement in s. 480.14 (3), Stats., for providing an accounting to sellers of the auction proceeds, as well as the duty to keep “complete and accurate records of the auction” for a period of at least 2 years after the auction is conducted under s. 480.18, Stats.

SECTION 14 creates s. RL 125.035 to specifically state a registrant must maintain a trust account if the proceeds of an auction are not paid out within 24 hours after the auction. Although this requirement may be inferred from the definition of “trust funds” in s. RL 125.02, a specific statement to this effect will eliminate any confusion or inadvertent oversight of the requirement.

SECTIONS 15 through 18 amend current section titles to indicate that they are specifically applicable to auction trust accounts.

SECTION 19 would require that registrants send written notification to the department within 10 days after any change in an auction trust account name or number, depository institution name change, or that an auction trust account has been closed.

SECTIONS 20 and 21 would amend and create provisions relating to a trust account bookkeeping system to assure that adequate records are created and maintained to enable the registrant, department and others to determine whether trust funds have been appropriately received, handled and disbursed by the registrant.

SECTION 22 expands the current authorization to use a computerized system to maintain trust account records to cover all records required under ch. RL 125.

SECTION 23 creates three additional causes for disciplinary action against a registrant, as discussed in this analysis under SECTIONS 8 and 9.

TEXT OF RULE

SECTION 1. RL 120.02 (4) is amended to read:

RL 120.02 (4) “Buyer’s ~~premium~~ fee or surcharge” means an amount of money, usually based on a percentage of the successful bid, charged to the successful bidder and either added to the successful bid to determine the final selling price or paid separately by the successful bidder in addition to the successful bid.

SECTION 2. RL 120.02 (12) is created to read:

RL 120.02 (12) “Trade name” means a name other than the name appearing on an auctioneer’s or auction company’s registration certificate, under which an auctioneer or an auction company advertises or does business.

SECTION 3. A Note following RL 121.02 (2) is created to read:

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant shall be provided with reasonable accommodations.

SECTION 4. RL 121.04 (1) (c) 3. is amended to read:

RL 121.04 (1) (c) 3. The applicant has ~~retaken~~ taken and passed the licensing registration examination within one year prior to the date of the application for renewal of registration.

SECTION 5. RL 121.07 (1) is repealed.

SECTION 6. 121.07 (2) is renumbered RL 121.07.

SECTION 7. The Note following RL 122.02 is amended to read:

Note: Applications may be obtained from the department located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708. An otherwise qualified applicant shall be provided with reasonable accommodations.

SECTION 8. RL 122.04 (title) and 122.04 are amended to read:

RL 122.04 (title) ~~Unauthorized assistance~~ Cheating on examination. An applicant may not give or receive unauthorized assistance during the examination. ~~The action taken by the department when unauthorized assistance occurs shall be related to the seriousness of the offense. These actions may include withholding the score of the applicant, entering a failing grade for the applicant, and suspending the ability of the applicant to sit for the next scheduled examination after the examination in which the unauthorized assistance occurred,~~ improperly remove notes, examination questions or secure documents from the examination setting, sell or distribute actual examination questions from the examination, buy or obtain unauthorized access to examination questions, or otherwise violate the published rules of conduct of the examination.

SECTION 9. RL 123.03 is repealed and recreated to read:

RL 123.03 Contents of advertising. All advertisements that an auction will be conducted shall contain the following information:

(1) The name or trade name of an auctioneer responsible for the auction conducted pursuant to the contract required under s. 480.14 (1), Stats., and the name or trade name of any auction company that is managing the auction.

(2) A statement that the auctioneer is a 'registered Wisconsin auctioneer' and the state registration number of the auctioneer.

(3) A statement of the terms and conditions under which the registrant will accept payment by buyers at the auction.

(4) The percentage or other amount of any buyer's fee or surcharge which is a condition to sale.

SECTION 10. RL 124.02 (5) is amended to read:

RL 124.02 (5) A statement of whether a buyer's ~~premium fee~~ or surcharge will be assessed and, if so, the percentage or other amount to be charged to the successful bidder.

SECTION 11. Chapter RL 125 (title) is amended to read:

CHAPTER RL 125 (title)

~~TRUST ACCOUNTS~~
MAINTENANCE OF RECORDS

SECTION 12. RL 125.02 is amended to read:

RL 125.02 **Definition.** In this chapter, "trust funds" means cash, checks, share drafts, drafts or notes received by an auctioneer or an auction company on behalf of ~~a principal or any other person~~ while acting as an auctioneer or auction company for an auction of goods. "Trust funds" does not include proceeds received by an auctioneer or an auction company on behalf of ~~a principal or any other person~~ pursuant to an auction in which the written contract under s. 480.14, Stats., requires the registrant to pay the owner or consignor within 24 hours after the auction.

SECTION 13. RL 125.03 is repealed and recreated to read:

RL 125.03 Account summary sheet for registrants not maintaining a trust account. An auctioneer or auction company that is not required to maintain a trust account shall maintain an account summary sheet which shows the receipts, deposits, expenses and disbursements of each individual auction.

Note: This provision applies only to registrants not required to maintain a trust account. Registrants for whom a trust account is required must use the trust account bookkeeping system described in s. RL 125.11.

SECTION 14. RL 125.035 is created to read:

RL 125.035 Trust account required. An auctioneer or auction company shall maintain a trust account when the registrant receives and holds auction funds which are not disbursed to the owner or consignor under a written contract under s. 480.14, Stats., within 24 hours after the auction.

SECTION 15. RL 125.05 (title) is amended to read:

RL 125.05 (title) Time of trust account deposit.

SECTION 16. RL 125.06 (title) is amended to read:

RL 125.06 (title) Opening and closing trust accounts.

SECTION 17. RL 125.07 (title) is amended to read:

RL 125.07 (title) Trust account designation.

SECTION 18. RL 125.08 (title) is amended to read:

RL 125.08 (title) Notification of the department regarding trust account.

SECTION 19. RL 125.08 (3) and (4) are created to read:

RL 125.08 (3) An auctioneer or auction company shall notify the department no later than 10 days after a change has been made to an auction trust account name, auction trust account number or depository institution name. The notification shall be provided on a form prepared by the department.

Note: Forms may be obtained from the board office located at 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708.

(4) An auctioneer or auction company shall notify the department no later than 10 days after an auction trust account has been closed. This notification shall be made in written correspondence to the department.

SECTION 20. RL 125.11 is renumbered RL 125.12 (intro.) and RL 125.12 (title) and (intro.) are amended to read

RL 125.12 (title) Trust account bookkeeping system. (intro.) An auctioneer or an auction company required to maintain a trust account shall maintain a bookkeeping system that enables the auctioneer or auction company to adequately account for all trust funds in a trust account, to maintain an accurate and sufficient balance in the account and to account for all trust funds received from specified buyers and paid to specified sellers for specified purchases. The bookkeeping system shall consist of at least the following:

SECTION 21. RL 125.11 (1) to (4) are created to read:

RL 125.11 (1) CHECK REGISTER. An auctioneer or an auction company shall maintain a record regarding a trust account, called a check register, which shall show the date, the payee, the number of the check, share draft or draft and the amount.

(2) BANK RECONCILIATION. An auctioneer or an auction company shall reconcile the trust account in writing each month unless there has been no activity during the month. The written reconciliation shall include all of the following:

- (a) The ending bank statement balance.
- (b) The date and amounts of the deposits in transit.
- (c) The check number and amounts of outstanding checks.
- (d) The resulting reconciled bank statement ending balance.

(3) VALIDATION. The auctioneer or auction company shall review the reconciled bank statement ending balance, the account summary sheets described in sub. (4), and the check register to ensure that all of the records are accurate and in agreement as of the date the trust account statement has been reconciled.

(4) ACCOUNT SUMMARY SHEET. An auctioneer or auction company shall maintain a record regarding a trust account, called an account summary sheet, which shows the receipts, deposits, expenses and disbursements as they affect each individual auction.

SECTION 22. RL 125.12 is renumbered RL 125.025 and RL 125.025 (intro.) is amended to read:

RL 125.025 Use of computers. (intro.) An auctioneer or an auction company may maintain ~~trust account~~ any records required by this chapter in a computerized system, provided that:

SECTION 23. RL 126.02 (11), (12) and (13) are created to read:

RL 126.02 (11) Cheating on the registration examination contrary to s. RL 122.04.

(12) Failing to post written notice at the location where the auction is to be conducted, prior to the commencement of an auction, of the terms and conditions under which the registrant will accept payment by buyers.

(13) If a buyer's fee or surcharge is a condition of sale, failing to post written notice at the location where the auction is to be conducted, prior to the commencement of an auction, of the percentage or other amount of the buyer's premium or surcharge.

(END OF TEXT OF RULE)

The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register pursuant to s. 227.22 (2) (intro.), Stats.

Dated 5/14/98

Agency *June Suhling*
June Suhling, Deputy Secretary
Department of Regulation and Licensing

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5/11/99



State of Wisconsin

DEPARTMENT OF REGULATION AND LICENSING

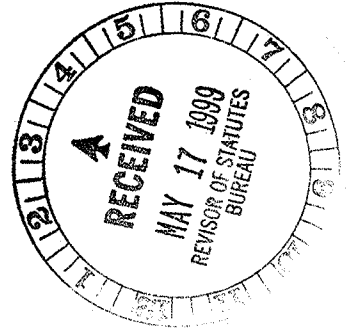
CORRESPONDENCE/MEMORANDUM

DATE: May 17, 1999

TO: Gary Poulson
Assistant Revisor of Statutes

FROM: Pamela A. Haack, Administrative Rules Coordinator
Department of Regulation and Licensing
Office of Administrative Rules

SUBJECT: Final Order Adopting Rules



**Agency: Department of Regulation and Licensing
Auctioneer Board**

Attached is a copy and a certified copy of a final order adopting rules.

Please stamp or sign a copy of this letter to acknowledge receipt.

Thank you.