

WSR 24-21-149

PROPOSED RULES

DEPARTMENT OF LICENSING

[Filed October 22, 2024, 3:07 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-09-083.

Title of Rule and Other Identifying Information: WAC 308-66-110
Definitions.

Hearing Location(s): On December 6, 2024, at 11:00 a.m., join the Teams meeting here [contact agency for link], Meeting ID 215 301 082 920, Passcode v5d4A4; or dial in by phone 1-564-999-2000,,462745124# United States, Olympia. Find a local number, Phone conference ID 462 745 124#. If you are having trouble accessing the virtual meeting, please call 360-902-3486 at the time of the hearing to request assistance. Please email rulescoordinator@dol.wa.gov if you would like to request an interpreter, or other accommodations, at least one week in advance of the public hearing.

PLEASE NOTE: Hearing participants are encouraged to attend in person or be prepared to use the telephonic option (call in) if they experience technical difficulties. In-person attendance will take place at the Highways and Licensing Building, 1125 Washington Street S.E., Olympia, WA 98504.

Date of Intended Adoption: December 7, 2024.

Submit Written Comments to: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, email rulescoordinator@dol.wa.gov, by December 6, 2024.

Assistance for Persons with Disabilities: Contact Ellis Starrett, phone 360-902-3846, email rulescoordinator@dol.wa.gov, by November 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule seeks to improve regulatory compliance for vehicle dealers and manufacturers by clarifying definitions related to certain vehicle dealer and manufacturer activities under chapter 46.70 RCW, Dealers and manufacturers. The proposed amendment further defines the "soliciting" of a sale and creates a new definition for the act of "public education." Additionally, the proposed amendment adds examples of what constitutes "public education."

Reasons Supporting Proposal: Currently, there is ambiguity around what constitutes the "soliciting" of a sale and "public education." This has created difficulties for vehicle dealers and manufacturers operating within Washington state with respect to compliance. These amendments will clarify what qualifies as the "soliciting" of a sale and "public education."

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, and 46.70.160 Rules and regulations.

Statute Being Implemented: RCW 46.70.011 Definitions.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; Implementation: Bill Dutra, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-6510; and Enforcement: Robert Jelvick, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1448.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. These rules do not grant or revoke a benefit for any individual that was not already established in law. These rules clarify existing requirements in law without imposing new fees or penalties.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. These rules do not grant or revoke a benefit for any individual that was not already established in law. These rules clarify existing requirements in law without imposing new fees or penalties.

October 22, 2024
Ellis Starrett
Rules and Policy Manager

OTS-5912.1

AMENDATORY SECTION (Amending WSR 07-03-119, filed 1/22/07, effective 2/22/07)

WAC 308-66-110 Definitions. For the purpose of administering chapter 46.70 RCW, the following terms shall be construed in the following manner:

(1) "Offering" the sale of a vehicle shall include the distribution by any means of a list, with or without prices, of vehicles for sale.

(2) "Soliciting" the sale of a vehicle (~~shall include~~) means:

(a) An offer to effect the purchase or sale of a vehicle on behalf of another person.

(b) Discussing any of the following topics on behalf of another person:

(i) The price of a vehicle;

(ii) Terms of purchase;

(iii) Prospective financing;

(iv) Availability of vehicles for purchase; or

(v) Vehicle trade-ins.

(3) "Normal business hours" or "reasonable times" shall include, but not be limited to, the hours from 10:00 a.m. through 4:00 p.m. for five days each week. When a dealer closes the place of business during normal business hours, a sign must be posted on the main door of the business stating the time that the dealer will next be open for business and how the dealer may be contacted provided that this is not permission to routinely avoid maintaining normal business hours.

(4) An "employee" of a dealer is a person on the payroll who appears on the record of the dealer as an employee for whom Social Security, withholding tax, and all deductions required by law have been made.

(5) A "broker" shall mean any person acting independently, who for a commission, fee or any other form of compensation arranges or

engages in the wholesale or retail purchase, sale or lease with option to purchase, of a vehicle.

(6) A "vehicle dealer identification card" is a card, prescribed by the department and issued by a licensed dealer, that is used to identify the principal of a dealership, including a corporate officer, a partner of a partnership, or sole proprietor, or a member of a limited liability company, or an "employee," for purposes of driving a vehicle bearing dealer license plates.

(7) A "demonstration permit" is a permit issued by a dealer to a prospective customer entitling the prospective customer to operate a particular vehicle for demonstration purposes.

(8) Current service agreement - The agreement between a vehicle manufacturer or vehicle distributor and a seller, stipulating that the seller will provide warranty adjustments for the owners of that manufacturer's or distributor's new vehicles which qualify for adjustments under the manufacturer's or distributor's warranty.

(9) New vehicle warranty - The warranty extended by a manufacturer or distributor to the first retail purchaser.

(10) "Closing" shall mean the process of completion of sale transaction.

(11) "Completion of sale" in the case of a consigned vehicle shall mean that the purchaser has possession of the vehicle, all liens against the vehicle are paid, the seller has the proceeds of sale, and title to the vehicle has been transferred to the retail purchaser.

(12) "Listing" shall mean a contract between a seller of a used mobile/manufactured home and a listing dealer for the dealer to locate a willing purchaser for that home.

(13) "Consignment" shall mean an arrangement whereby a vehicle dealer accepts delivery or entrustment of a vehicle and agrees to sell the vehicle on behalf of another.

(14) "Remanufactured" shall mean to remake or reprocess into a finished product by a large scale industrial process.

(15) "Guaranteed title" as it relates to a consigned vehicle shall mean a guarantee by the consignor to convey title to the consignee upon sale of the vehicle. The consignment agreement between the consignor and consignee shall comply with the provisions of WAC 308-66-155.

(16) "Used vehicle" in keeping with RCW 46.04.660, and for purposes of the requirement for a service agreement in RCW 46.70.101

(1) (a) (vii), a vehicle will be considered used if it meets the following requirements:

(a) It has been titled or registered to a bona fide retail purchaser/lessee for a period of 90 days or more; and

(b) The vehicle has been operated (driven) to the extent that its odometer registers 3,000 miles or more.

However, the requirements of (a) and (b) of this subsection will not apply if a bona fide retail purchaser/lessee sells, trades, or otherwise disposes of the vehicle prior to its having met those requirements. To document such an exemption, the subsequent wholesaling and retailing dealer must keep, as a dealer business record, a notarized affidavit from either the bona fide retail purchaser/lessee, or in the case of an imported vehicle, a notarized affidavit from the importer of the vehicle. That affidavit will be prescribed by the department and must confirm that the retail purchaser/lessee was a bona fide retail purchaser/lessee.

(17) A "bona fide retail purchaser/lessee" is one who purchases or leases a vehicle for the purpose of using it, rather than for the purposes of resale or lease.

(18) The "principal" of a business as used herein means a true party of interest, including:

- (a) The proprietor of a sole proprietorship;
- (b) A partner of a partnership or a limited liability partnership;
- (c) An officer of a corporation;
- (d) A member or manager of a limited liability company;
- (e) A spouse, if he or she is a true party of interest;
- (f) In addition, any owner of ~~((ten))~~ 10 percent or more of the assets who is not already listed.

(19) "Public education" means increasing the public's knowledge of a vehicle's specifications, features, and capabilities, but does not include any activities in RCW 46.70.011(17).

(a) When displaying or demonstrating vehicles for public education purposes, a licensed manufacturer must take reasonable steps to inform the public that the manufacturer may not engage in any motor vehicle dealer business activity, as defined in RCW 46.70.011(17).

(b) The following activities are examples of public education:

(i) The display of vehicles in a facility owned, leased, rented, or operated by a licensed manufacturer that prominently posts legible signs throughout such facility stating that the vehicles cannot be sold.

(ii) The display of vehicles by a museum.

(iii) A representative from a licensed manufacturer driving a vehicle that is clearly marked as "not for sale" for the sole purpose of displaying, discussing, or demonstrating the vehicle's specifications, features, and capabilities.

(c) Public education is not considered a motor vehicle dealer business activity that requires licensure.