

WSR 25-02-054

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed December 20, 2024, 2:39 p.m., effective January 20, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 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 amendment further defines the "soliciting" of a sale and creates a new definition for the act of "public education." Additionally, the amendment adds examples of what constitutes "public education."

Citation of Rules Affected by this Order: Amending WAC 308-66-110 Definitions.

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

Other Authority: RCW 46.70.011 Definitions.

Adopted under notice filed as WSR 24-21-149 on October 22, 2024.

A final cost-benefit analysis is available by contacting Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, phone 360-902-3846, email rulescoordinator@dol.wa.gov, website dol.wa.gov/about/rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 1, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 20, 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.