

WSR 25-04-119

EXPEDITED RULES

DEPARTMENT OF LICENSING

[Filed February 5, 2025, 11:54 a.m.]

Title of Rule and Other Identifying Information: WAC 308-66-110 Definitions, and 308-66-152 Unlawful practices.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department of licensing (DOL) is considering creating new rules to establish business and professional license requirements per ESHB 2153, passed during the 2024 legislative session. These rules clarify that vehicle dealers must use etching or a permanent marker as defined when a consumer has opted for the service of a marked catalytic converter at purchase.

Reasons Supporting Proposal: Implementing recently passed legislation.

Statutory Authority for Adoption: RCW 46.01.110 Rule-making authority, 46.70.011 Definitions, 46.70.160 Rules and regulations, and 46.70.180 Unlawful acts and practices.

Statute Being Implemented: Chapter 31 [301], Laws of 2024.

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

Name of Proponent: DOL, governmental.

Name of Agency Personnel Responsible for Drafting: Ellis Starrett, 1125 Washington Street S.E., Olympia, WA 98504, 360-902-3846; Implementation: Catherine Naegeli, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1891; and Enforcement: Jennifer Clawson, 405 Black Lake Boulevard S.W., Olympia, WA 98502, 360-664-1452.

This notice meets the following criteria to use the expedited adoption process for these rules:

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: Content is explicitly and specifically dictated by statute.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ellis Starrett, DOL, 1125 Washington Street S.E., Olympia, WA 98501, phone 360-791-2091, email RulesCoordinator@dol.wa.gov, BEGINNING February 5, 2025, AND RECEIVED BY April 8, 2025.

February 5, 2025
Ellis Starrett
Rules and Policy Manager

RDS-6162.1

AMENDATORY SECTION (Amending WSR 25-02-054, filed 12/20/24, effective 1/20/25)

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 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 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.

(20) A "permanent marker" is an industrial heat resistant marker that is used to permanently mark metal and withstand weather and heat conditions.

AMENDATORY SECTION (Amending WSR 15-16-125, filed 8/5/15, effective 9/5/15)

WAC 308-66-152 Unlawful practices. (1) Examples of unlawful acts or practices, as defined by RCW 46.70.180 (1)(a) ~~((7))~~ include, but are not limited to, representations such as "no down payment," "a dollar down," "five dollars down," "take-over payments," "no cash out of your pocket," "no cash needed," and others of similar nature if either secondary financing or initial payment of any amount, including factory rebates in excess of that represented, is required from the purchaser. A dealer's plan to have all or a portion of the lease or selling price financed by a third party does not relieve the dealer of an obligation to refrain from this prohibited type of advertising. When any of these representations are made a payment disclosure shall be made as contained in subsection (6) of this section.

(2) Examples of unlawful acts or practices as defined by RCW 46.70.180 (1)(b) ~~((7))~~ include, but are not limited to, representations such as "~~((one hundred))~~ 100 percent financing" if the terms of the purchase or lease involve more than one security agreement and payments to more than one financing institution. When collateral in addition to the vehicle is required, it must be listed on the security agreement containing the vehicle's description, not on a separate agreement.

(3) It shall be considered false, deceptive or misleading, and thereby unlawful, to advertise with words, phrases, or initials which are not clear and conspicuous and easily comprehended by persons other than those closely allied with the vehicle industry.

(a) Clear and conspicuous within an advertisement shall mean:

(i) In the case of a television advertisement, the information required to be disclosed shall be completely disclosed audibly, visually, or a combination thereof.

(A) If made visually, shall be made in a type size sufficiently large to be read with reasonable ease; shall appear on the television screen for at least seven seconds; shall be in print type of a color or shade that contrasts readily with the background; shall not be obscured by other words or images appearing on the television screen; and

(B) If made audibly, shall be spoken with sufficient deliberateness, clarity, and volume so as to be understood by the average television listener; shall not be obscured by sounds which interfere with or distract from the disclosures being made.

(ii) In the case of a radio advertisement, the information required to be disclosed shall be spoken with sufficient deliberateness, clarity, and volume so as to be understood by the average radio lis-

tener; shall not be obscured by sounds which interfere with or distract from the disclosures being made.

(iii) In the case of a printed advertisement, the information required to be disclosed shall be made in a type size which shall be sufficiently large to be read with reasonable ease and shall be made in relatively close proximity to each of the terms which require that the disclosures be made; disclosures shall be made in such color and contrast so as not to be obscured by other words or pictures appearing in the advertisement.

(b) Examples of words, phrases, or initials which are not easily comprehended by persons other than those closely allied with the vehicle industry, and that may not be used without explaining their meaning in the same advertisement, include but are not limited to: Executive; capitalized cost reduction, o.a.c., c.f., f.o.b. The words annual percentage rate may be abbreviated to read A.P.R. or apr.

(4) Examples of false, deceptive or misleading, and thereby unlawful statements or representations within the meaning of RCW 46.70.180(1) include, but are not limited to:

(a) Advertising a used vehicle for sale that is not available at the time the advertisement is placed;

(b) Advertising a new vehicle as available for immediate delivery if it is available only on order;

(c) Advertising any offer in connection with the sale of a vehicle or model or type of vehicle without disclosing any material limitations((7)) including, but not limited to, the time limit, or that there is no time limit on the offer;

(d) Advertising using a picture:

(i) Of a new vehicle which does not substantially show the same vehicle offered for sale; or

(ii) Of a used vehicle which is not the same vehicle offered for sale;

(e) Causing an advertisement to be placed by a dealer or dealer representative that does not identify the dealer by its complete business name, or by the word "dealer" or abbreviation "DLR";

(f) Incorporating in the dealer's name any term or designation which would have a tendency to mislead others as to the true nature of the business, such as the use of "wholesale," when a dealer's business is substantially retail, or "discount" when the price and policy of a dealer does not provide substantial discounts;

(g) Advertising a vehicle manufactured fewer than two years prior to the date of the advertisement without designating the vehicle as "used," "demo," or "demonstrator." For purposes of adequate disclosure, the appropriate quoted term must be employed. Other descriptive words, such as "executive," "lease," or "rental" may be used in conjunction therewith, but not so as to create ambiguity as to whether the vehicle is new, used, or a demonstrator((7));

(h) Advertising a "rebuilt vehicle" for sale with knowledge as defined in RCW 46.70.101 (1)(b)(xi) that the vehicle is rebuilt, without clearly and conspicuously disclosing "rebuilt" in the advertisement;

(i) Advertising a specific price for a specific vehicle or model or type of vehicle without designating the number of vehicles available at that price, and((7));

(i) Without clearly identifying the vehicles available by complete vehicle identification number, license plate number; or

(ii) Without clearly and conspicuously stating in the advertisement that such vehicle identification or license plate number for each

advertised vehicle is available from the dealer upon request, and requiring that the dealer using this method of identifying vehicles keep the media advertising copy along with the vehicle identification number or license plate number of each advertised vehicle offered for a specific price. Such records shall be retained for one year following the advertisement. Dealers shall also date and post a written copy of the advertisement text and list of vehicle identification numbers or license plate numbers in a conspicuous public area at their place of business for the duration of the vehicle's availability at the advertised price: Provided, however, That a dealer need not designate the number of vehicles available or identify the vehicles available or state in the advertisement that the identification of advertised vehicles is available upon request if, in fact, an unlimited supply of such vehicles are available for immediate delivery;

(j) Selling a particular vehicle at a higher price than advertised, regardless of trade-in allowance;

(k) Adding charges, costs, or items to the advertised price, except those allowed by statute, other than the selling price of additional equipment ordered by the purchaser, sales tax, and license fees. "Additional equipment ordered by the purchaser" shall not include options already installed on the vehicle at the time of advertising;

(l) Expressing "advertised price" as a combination of:

(i) Dollar figures and words unless all component figures and the total dollar figure is expressed; or

(ii) Dollar figures and dollar figures unless all component figures and the total dollar figure is expressed;

(m) Advertising that a new vehicle or model or type of vehicle will be leased or sold for a certain amount above or below invoice or cost without:

(i) Disclosing the actual dollar amount being referred to as "invoice";

(ii) Stating the final, total price for each vehicle, which may exclude sales taxes and license fees; and

(iii) Computing invoice as the actual cost to the dealer to get each vehicle from the manufacturer((-));

In computing "invoice" the dealer may include the actual cost of transportation of the vehicle from the manufacturer to the dealer, but must exclude dealer holdbacks, other manufacturer incentives, optional advertising fees, dealer overhead expenses, and other similar expenses;

(n) Advertising that a new or used vehicle is reduced in price from a former price, or that the advertised price is a percentage of dollar amount savings from a former price, or words to that effect, unless the seller actually recently advertised or has records showing that vehicle has been offered for sale at the former price;

(o) Advertising or offering:

(i) Any rebate that is not payable to the consumer, which the consumer may apply to the purchase;

(ii) Any rebate that requires any financial participation by the dealer, without also clearly and conspicuously stating the following disclosure: "Dealer participation in this rebate program may increase vehicle price before rebate";

(iii) Any rebate without clearly and conspicuously stating the specific vehicle(s) or model(s) to which the rebate applies and all material limitations on and conditions of the rebate;

(iv) Multiple rebates that are applicable to the same vehicle(s) or model(s) but are not available in combination in any manner that implies that the rebates are available in combination, such as by adding them together;

(v) Any rebate other than a rebate offered by the dealer's franchise manufacturer or a financial institution that is affiliated by ownership or agreement with the dealer's franchise manufacturer;

(vi) A sum total of multiple rebates or a vehicle price that incorporates any rebate, unless each incorporated rebate meets the following requirements:

(A) For a rebate offered by a dealer's franchise manufacturer, more than (~~(fifty)~~) 50 percent of individuals who acquired vehicles in the state of Washington from the manufacturer's franchise dealers in the preceding (~~(twelve)~~) 12 months would have qualified for the rebate; and

(B) For a rebate offered by a financial institution that is affiliated by ownership or agreement with the dealer's manufacturer, more than (~~(fifty)~~) 50 percent of individuals in the state of Washington who applied in the preceding (~~(twelve)~~) 12 months to the financial institution for financing for the acquisition of a vehicle produced by the franchise manufacturer would have qualified for the rebate(~~(-)~~);

(p) Advertising that "any written price quote will be beaten," "any deal will be accepted," or that a dollar amount is guaranteed on any "push, pull or drag," trade-in, or words to that effect unless the dealer can clearly show through the records of the dealership that such is the case;

(q) Advertising a vehicle or model or type of vehicle as being available at "lowest cost," "best deal" or other words to that effect unless the dealer can clearly show through the records of the dealership that such is the case;

(r) Advertising an interest rate that is adjustable without clearly and conspicuously disclosing that the interest rate is adjustable;

(s) Advertising a vehicle or model or type of vehicle for sale at a financing rate which has been bought down by the dealer, without disclosing the actual annual percentage rate.

(5) No advertisement to aid, promote, or assist directly or indirectly any extension of credit may state:

(a) That a specific amount of credit or installment amount can be arranged unless the creditor usually and customarily arranges or will arrange credit amounts or installments for that period and in that amount; or

(b) That no down payment or that a specified down payment will be accepted in connection with any extension of credit unless the creditor usually and customarily accepts or will accept down payment in that amount.

(6) No advertisement to aid, promote, or assist directly or indirectly any credit sale of a vehicle shall state the amount or percentage of the down payment required, or that no down payment is required, the amount of any payment or the number of payments or the period of repayment, the amount of any finance charge or that there is no charge for credit, unless it states clearly and conspicuously all of the following terms:

(a) The cash price or the amount of the loan as applicable;

(b) The amount or percentage of the down payment required, or that no down payment is required, as applicable;

(c) The number, amount, and frequency of payments scheduled to repay the indebtedness if the credit is extended;

(d) The amount of the finance charge expressed as an annual percentage rate;

(e) The deferred payment price or the sum of the payments as applicable;

(f) The specific model or type of vehicle(s) to which the advertised offer applies; and

(g) Any other conditions material to the advertised offer.

(7) Any advertisement to aid, promote, or assist directly or indirectly a consumer lease must state clearly that the advertisement offers a lease rather than a vehicle sale.

(8) No advertisement to aid, promote, or assist directly or indirectly any consumer lease of a vehicle shall state the amount of any monthly payment, or state a capitalized cost reduction or other payment required prior to or at consummation/delivery, unless it also states the following terms:

(a) That the transaction advertised is a lease;

(b) The total amount due prior to or at consummation/delivery;

(c) The number, amount, and due dates or period of scheduled payments under the lease;

(d) A statement of whether or not a security deposit is required; and

(e) A disclosure of the lessee's liability at the end of an open-end lease.

(9) Failing to mark a catalytic converter either in etching or with a permanent marker as defined in WAC 308-66-110 when a consumer has opted and paid for this service.