



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-014

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

1. Statutory Authority

a. SECTION 2 of the proposed rule specifies in s. Trans 138.0225 (intro.) that only persons specified in s. 218.34 (1) (a), Stats., “who hold a valid license may bid on or purchase motor vehicles at motor vehicle auction dealers”. Similarly, proposed sub. (3) forbids any person from submitting a bid on or purchasing a motor vehicle at a motor vehicle auction without a “valid license”. The rule defines “valid license” as “a written authorization issued by the department that authorizes the holder to bid on or to purchase at a motor vehicle auction, to an applicant who meets the requirements under s. Trans 138.0225”. Among other requirements under proposed s. Trans 138.0225, an applicant must “be an employee of a licensed motor vehicle dealer”. A person who is licensed as a motor vehicle dealer or as a motor vehicle wholesaler would seem not to satisfy that requirement, and thus under the rule would seem to be prohibited from bidding on or purchasing a motor vehicle at a motor vehicle auction. The department should address whether the rule is consistent with s. 218.34 (1) (a), Stats., which allows licensed motor vehicle dealers, wholesalers, and buyers to bid on and purchase motor vehicles at motor vehicle auctions.

b. The statutes define “motor vehicle buyer” as “an individual who is employed by or who has contracted with one or more motor vehicle dealers to bid on or purchase a motor vehicle being held and offered for sale by a motor vehicle dealer or motor vehicle auction”. [s. 218.0101 (22m), Stats.] Under SECTION 2 of the proposed rule, an applicant for a “valid license” must “be an employee of a licensed motor vehicle dealer”. This does not appear to expressly include individuals who have contracted with a motor vehicle dealer. Is the rule’s limitation of “valid licenses” to an “employee of a licensed motor vehicle dealer” consistent with s. 218.0101 (22m), Stats.?

c. The department should explain why the rule prescribes different expiration dates for out-of-state buyers than it does for in-state buyers and the statutory authority for doing so.

d. The rule summary’s listing of statutes interpreted and statutory authority could be reorganized and revised. The statutes interpreted should include the following: ss. 218.0111 (1), 218.0114 (1) and (4), and 218.34. The statutory authority should include the following: ss. 85.16

(1), 218.0152 (3), and 227.11 (2) (a), Stats. Note that the citation to s. 227.10 (1), Stats., is not included in this statutory authority list, as that section does not confer rulemaking authority, and this list instead includes s. 227.11 (2) (a), Stats., to the extent the department may feel it is necessary to cite that authority. Also note that a citation to s. 85.16 (1), Stats., is added as it does confer rulemaking authority. [s. 1.01 (2) (c) 1. and 2., Manual.]

2. Form, Style and Placement in Administrative Code

a. Proposed s. Trans 138.0225 (intro.) should be revised to include a statement about the interaction and applicability of the subunits, such as “All of the following conditions apply to a valid license:”. [s. 1.11 (2), Manual.]

b. The department should consider reorganizing the rule to group the eligibility requirements together and the application requirements together. Proposed s. Trans 138.0225 (1) (a) and (c) are eligibility requirements for a “valid license”. Proposed sub. (1) (d) is an application requirement, as is the requirement in proposed sub. (2) that an applicant submit to the department an application for a license on a form approved by the department. Proposed sub. (1) (b) does not fit neatly into either of these categories. Additionally, sub. (1) (intro.) should include a statement about the interaction and applicability of the subunits, such as “meet all of the following requirements:”. [s. 1.11 (2), Manual.]

c. The department should review and revise the organization of proposed s. Trans 138.0225 (2) (intro.) and (a). When an introduction and subunits are created, the introduction should include a statement about the interaction and applicability of the subunits (such as “all of the following”), and more than one subunit should be created. [s. 1.11 (2) and (4), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

a. The rule summary explains that the rule’s purpose is to address issues related to persons who may be licensed as motor vehicle buyers. The term “motor vehicle buyer” is defined in s. 218.0101 (22m), Stats., but the rule does not reference that definition or provide a separate definition of “motor vehicle buyer”. [s. 1.07 (4), Manual.]

b. The proposed rule in s. Trans 138.0225 (2) (intro.) refers to an application form that must be submitted. The proposed rule should add a note indicating how an applicant may obtain the form. [s. 1.12 (3), Manual.]

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The department’s plain language analysis provides historical information about how it has implemented s. 218.34, Stats., over time, but does not directly connect the present rulemaking to the statutory language. It may be helpful for the department to more clearly explain why it believes this rulemaking correctly interprets s. 218.34, Stats., given that a purpose of the rulemaking appears to be to clarify an interpretation of the statute that differs from how it was previously implemented.

b. The department should consider whether what the rule defines as a “valid license” would more accurately be described as a “motor vehicle buyer’s license”. The requirement that an applicant for a valid license be an employee of a motor vehicle dealer suggests it is, though the rule also uses the term “buyer license” intermittently without defining the term. If what the

department means by “valid license” is actually a “motor vehicle buyer’s license”, the department should revise throughout the rule to ensure defined terms are used consistently and accurately.

c. In proposed s. Trans 138.0225 (intro.), the rule specifies that “[a]ll persons must keep the valid license on their person prior to bidding or purchasing vehicles at a motor vehicle auction”. And proposed sub. (3) similarly specifies that “no person may submit bids or purchase motor vehicles at a motor vehicle auction unless they have a valid license in their possession”. It appears these provisions might be intended to implement the statutory requirement that every motor vehicle buyer “carry his or her license when engaged in business and, and display the license upon request”. [s. 218.0114 (18), Stats.] If that is the case, the department should revise the rule to eliminate redundancy and adhere more closely to the statutory language.

d. In proposed s. Trans 138.0225 (2) (intro.), the phrase “is considered holding a valid license” is indirect, passive voice, and grammatically incomplete. It should be rewritten to more directly specify that a license is not valid until the department issues the license. [s. 1.05 (1) (d), Manual.]

e. Proposed s. Trans 138.0225 (2) (a) provides that a motor vehicle buyer’s license expires “on the date printed on the license or the expiration date [of the] sponsoring employer’s motor vehicle license, whichever is sooner”. How will the department establish what date is printed on the license? What standard will be used to make that calculation? Additionally, the proposed rule specifies when a license expires for “persons who live outside this state”. Would these expiration dates apply to a buyer who resides in a state other than Wisconsin but works for or contracts with a Wisconsin motor vehicle dealer?

f. Proposed s. Trans 138.0225 (4) appears to mandate that a person renew his or her license. If the purpose, instead, is to specify the procedure for a person to renew if he or she wishes to renew, the rule should specify that procedure. In particular, the standard for renewal should be identified by rule; a statement that renewal must be “in a manner specified by the department” is inadequate to alert a reader as to the renewal requirements that must be met.

g. Throughout the rule, the department should use the singular forms of words unless specifically referring to multiples of the word used. Singular use is the favored style and includes the plural. Also, when regulating classes of people, the obligation to comply with the regulation is on each individual member of the group, not the group as a whole. [s. 1.05 (1) (c), Manual.]