Off-Road Vehicle Licensing:
A look at Out-of-State Purchase Compliance

DECEMBER 2020
Contents

Purpose & Scope ........................................................................................................................................... 2
Background .................................................................................................................................................. 3
Effectiveness ................................................................................................................................................ 4
Recommendations ....................................................................................................................................... 8
Appendix: Statement from Industry .......................................................................................................... 10
Purpose & Scope

The Legislature directed The Department of Licensing (DOL) to evaluate the effectiveness of chapter 218, Laws of 2017, regarding compliance with the registration of off-road vehicles including payment of retail sales and use tax.

This report provides background on the issue, challenges that DOL has encountered within the first three years of the enacted legislation, and recommendations for increasing compliance, including potential amendments to current law.

“The Department of Licensing shall evaluate the effectiveness of chapter 218, Laws of 2017, in improving compliance with state laws relating to the registration of off-road vehicles, including the payment of retail sales and use tax. The department of licensing shall recommend any statutory, administrative, or other changes needed to optimize and further strengthen the compliance, including an implementation timeline and corresponding resource requirements. Among its recommendations, the department of licensing must address potential changes to the process under RCW 46.93.210 by which the department notifies persons whose vehicles may not be properly registered in the state. The department shall submit a report to the governor and the transportation committees of the legislature by December 15, 2020.”

(Engrossed Substitute House Bill 2322)
Background

This section provides a brief overview of the history of Engrossed Substitute Senate Bill 5338 (ESSB 5338) and the current statutory requirements of RCW 46.93.210. This section also covers the educational efforts by DOL to inform manufacturers of the 2017 legislative change.

Overview

Governor Inslee signed ESSB 5338 on May 5, 2017 and it became effective on August 1, 2017. The intent of this law can be found in RCW 46.09.495, under the notes section. DOL was appropriated $15,800 in funding during the 2017-2019 Biennium to cover certified mailing costs. The Department has not received any ongoing funding outside of this initial appropriation.

Requirements

This statute requires motorsports vehicle manufacturers to report to DOL each year, a list of all motorsport vehicle warranties for off-road vehicles and snowmobiles sold to Washington residents by out-of-state motorsports vehicle dealers in the previous calendar year. Failure of a motorsports vehicle manufacturer to report a complete listing to DOL, by the first business day in February each year, results in an administrative fine of one hundred dollars each day that DOL has not received the report.

This law also requires DOL to examine these reported lists to verify whether or not the purchased vehicles have been properly registered in Washington State. DOL is then required to notify the owners whose vehicle or snowmobile has not been properly registered by the end of February each year. This notification is accomplished by sending a certified letter with return receipt to the owner, notifying them of titling, registration, and use tax payment requirements, as well as penalties for failure to comply with the law.

Education

In 2017, DOL notified manufacturers by mail of the enacted legislation and of the new reporting requirements. In late 2018, DOL sent a second letter to manufacturers informing them of the reporting requirements and providing guidance on how to report their warranty lists each year.
Effectiveness

DOL analyzed manufacturer reporting, notifications, including the cost of these notifications, and compliance when assessing the effectiveness of the current law.

Reporting RCW 46.93.210 requires DOL to examine lists reported by motorsports manufacturers to determine if the listed vehicles have ever been properly titled and registered in Washington State. This process requires agency staff to compile all manufacturer lists manually and cross reference the list with the vehicle licensing system. The remaining vehicles are converted back into a manual list and prepared for the mailing process.

DOL has sought voluntary reporting compliance from motorsports manufacturers by notifying them of reporting requirements in both 2017 and 2018. DOL focused its efforts towards education and outreach and has not assessed any administrative fines for companies that are late to report.

Table 1 is a breakdown of off-road vehicles and snowmobiles reported to DOL. In the first year of reporting (2018), the Department reviewed manufacturer lists and determined that some manufacturers reported all sales, rather than reporting only those out-of-state sales sold to Washington residents. Additional follow up was needed and delayed the notification process. Complete reports were received later in the year, requiring a separate notification mailing.

Table 1: Off road vehicle and snowmobile sales reported to DOL

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Number of Vehicles Reported by Manufacturers</th>
<th>Number of Vehicles Not in Vehicle Licensing System*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>No data available.</td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>2674</td>
<td>1605</td>
</tr>
<tr>
<td>2020</td>
<td>1773</td>
<td>1089</td>
</tr>
</tbody>
</table>

* Data represents vehicle record status prior to notification from DOL

Notifications

In the first year, notifications were created and mailed using agency resources. In subsequent years, notifications were created by DOL, and mailed to off road vehicle and snowmobile owners using Consolidated Mail Services through our partner agency Department of Enterprise Services (DES). Using these services increased the timeliness of the mailing and allowed for more data collection.

Table 2 shows how many notifications DOL mailed each year. Undeliverable mail was not tracked during the 2018 and 2019 calendar years. In 2020, undeliverable mail was tracked manually. 7.25% of the certified mailings in 2020 were returned to the Department as undeliverable.
Table 2: Annual Notifications

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Number of Notifications Mailed by DOL</th>
<th>Returned Mail (Undeliverable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>No data available.</td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>1605</td>
<td>No data available.</td>
</tr>
<tr>
<td>2020</td>
<td>1089</td>
<td>7.25%</td>
</tr>
</tbody>
</table>

Mailing Cost
The cost of mailing a certified letter with return receipt, as required by statute, has increased each year since the legislation was enacted. Table 3 highlights the rising cost of mailing notifications. This table also shows the estimated annual cost DOL incurred for mailing notifications in each calendar year.

Table 3: Cost of Certified Mail with Return Receipt

<table>
<thead>
<tr>
<th>Year</th>
<th>Estimated Cost Per Piece</th>
<th>Estimated Cost of Mailing Notifications*</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>$6.61</td>
<td>No data available.</td>
</tr>
<tr>
<td>2019</td>
<td>$6.78</td>
<td>$10,881</td>
</tr>
<tr>
<td>2020</td>
<td>$7.25</td>
<td>$7,895</td>
</tr>
</tbody>
</table>

*Cost is an estimate based on applicable rates. Does not include cost to administer the mailing.

Compliance
DOL measured compliance by evaluating off-road vehicle and snowmobile records after notifications were mailed to owners. Table 4 shows the percentage of vehicles and snowmobiles that were titled or registered within a specific timeframe. It is worth noting that the drop in overall compliance for 2020 may be due to the COVID-19 pandemic. It’s assumed that off-road vehicle and snowmobile owners may have been less likely to visit a licensing office during this time, resulting in lower rates of compliance.

Table 4: Licensing Compliance after Mailed Notification*

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Complied within 30 Days</th>
<th>Complied within 60 Days</th>
<th>Complied within 6 Months</th>
<th>Complied prior to 11/20/2020</th>
<th>Total Compliance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2018</td>
<td>No data available.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2019</td>
<td>22%</td>
<td>1%</td>
<td>2%</td>
<td>4%</td>
<td>29%</td>
</tr>
<tr>
<td>2020</td>
<td>6%</td>
<td>1%</td>
<td>3%</td>
<td>1%</td>
<td>11%</td>
</tr>
</tbody>
</table>

*Data based on the vehicle identification number (VIN). May not reflect compliance from the original purchaser.
Challenges

This section examines the challenges that DOL faces with the current statute. Included are challenges with funding, process integration, and departmental authority.

Funding
The cost of mailing a certified letter with return receipt has increased each year, resulting in an increase to the overall cost to administer the program. This increased cost has created a strain on State resources and has led to delays in report processing and notification timeliness. The legislature appropriated funding for the first two years after enactment of the legislation, however, DOL did not receive any funding in the current biennium to cover the administration of this program.

Process Integration
The process of notifying off road vehicle and snowmobile owners of their legal obligation to title and register their vehicle is a manual process, with most aspects of the process not integrated into DOL’s vehicle licensing system.

Return receipts are available to DOL electronically, however, DOL does not currently have a way of integrating this data into our vehicle licensing system. In analysis of the process, DOL did not identify a use for this data in improving licensing compliance.

The current process for measuring compliance requires extensive research and analysis. Integrating this process into DOL’s licensing system would allow the agency to gather and review this data more efficiently and timely.

Integrating the mailing of notifications into the licensing system would enhance the turnaround time for notifying owners and would likely reduce annual costs overall. Fully integrating this process into DOL’s licensing system is not feasible without additional funding from the Legislature.

Departmental Authority
DOL does not have authority to enforce licensing compliance with off-road vehicle and snowmobile owners. Current statute only requires the Department to provide notification of legal obligations to these owners.

The Department has received numerous responses from vehicle owners each year who have indicated that they are not legally obligated to title and register their vehicle. DOL does recognize that there are conditions where an owner can retain the purchased off-road vehicle or snowmobile and not be required to title or register the vehicle in Washington State. Figure 1 outlines a few examples for reference. In both of these scenarios, the customer would not be required to title and register their vehicle in Washington.
### Figure 1: Scenarios for Exemption from WA State Licensing

<table>
<thead>
<tr>
<th>Scenario 1</th>
<th>Scenario 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Owner is WA resident.</td>
<td>• Owner is WA resident.</td>
</tr>
<tr>
<td>• Owns home or property in Oregon.</td>
<td>• Owner has family that live in Idaho.</td>
</tr>
<tr>
<td>• Owner stores/uses vehicle at Oregon property only.</td>
<td>• Owner stores/uses vehicle in Idaho only.</td>
</tr>
</tbody>
</table>

DOL does not have any means to differentiate off-road vehicle and snowmobile owners who do not have a legal obligation to title or register their vehicle from those who have not fulfilled their legal obligation, making enforcement difficult, even with granted authority.

DOL does not have enforcement authority for unauthorized use. Enforcement for unauthorized use would fall to other state agencies such as the Department of Natural Resources or Department of Fish and Wildlife. DOL cannot speak to the impacts of enforcement on public lands or the impact it may have on licensing compliance.
Recommendations

DOL considered three areas of influence in developing its recommendations. These areas are statutory recommendations, administrative recommendations, and additional considerations, which includes a statement from industry stakeholders. The following are the agency’s recommendations for improving licensing compliance of off road vehicles and snowmobiles.

Statutory Recommendations
DOL recommends amending RCW 46.93.210 to remove the certified with return receipt mailing requirement. Certified mailing data is made available by the United States Postal Service for up to three months. DOL is unable to retrieve or review this data after that timeframe. This certified mailing requirement confirms the delivery of the notification to the vehicle owner, however, DOL has found no evidence that it plays a role in improving licensing compliance.

Removing the certified mailing with return receipt requirement would reduce costs to the State without reducing the effectiveness of the mailing. It would allow for multiple first-class notifications to be sent to owners, and would increase DOL’s ability to mail notifications in a timely manner. DOL would utilize the address of record to notify off-road vehicle and snowmobile owners via first-class mail.

Finally, DOL recommends amending RCW 46.93.210 to require the agency to notify the Department of Revenue (DOR) of off-road vehicle and snowmobile owners who have not complied with tax and licensing requirements.

Administrative Recommendations (Process)
Data suggests that the efforts made by the Department in educating the motorsports manufacturers had a positive effect and increased the accuracy of reporting each year. DOL will continue working closely with motorsport manufacturers to strengthen annual reporting compliance.

If DOL’s recommended statutory changes were enacted, DOL would send two separate notifications to off-road vehicle and snowmobile owners each calendar year. The first notification would follow current statutory requirements, informing off-road vehicle and snowmobile owners of their legal obligations. It would also inform owners that failure to comply may result in them being referred to the Department of Revenue (DOR).

DOL would create a process for exempt owners who are not required to register or title their off-road vehicle or snowmobile per Chapters 46.09 and 46.10 RCW. DOL would require these owners to respond to the notification in a timely manner.

The second notification would be a notice of referral to DOR for further review. This additional notification would be sent to owners who did not comply with licensing requirements or provide proof of exemption, after receiving the first notification. It is important to note that this additional notification could only be accomplished by removing the certified mailing with return receipt requirement from statute, or with additional funding from the legislature.
**Implementation and Resource Requirements**
DOL requires approximately nine months to implement the above recommendations. This includes rulemaking, implementing an exemption process, and the development of a second notification. This also includes technical solutions for fully integrating this process into DOL’s vehicle licensing system. Technical solutions may require additional time to implement, depending on the date that legislation is enacted.

DOL would require funding to implement the above recommendations. Funding would be used to update the vehicle licensing system and cover administrative costs to administer the program.

**Additional Considerations**
In developing recommendations, DOL partnered with representatives from DOR and representatives from the off-road vehicle and snowmobile industry to gather additional recommendations and considerations. A statement from the industry can be found in the Appendix of this report.
Appendix: Statement from Industry

“Chapter 218, Laws of 2017 was effective in identifying the large number of off-road vehicles (ORVs) that are being sold out of state for use in the state of Washington. Unfortunately, because of a lack of funding for enforcement, the Law has been woefully ineffective in stopping the problem or collecting the tax and licensing fees owed to the state of Washington. Additional funding, and enforcement by the Department of Revenue, is needed to make chapter 218 effective so that follow-up and education will take place with potential violators.

Along with this enforcement follow-up, eliminating the state’s reciprocity with Oregon for ORV licenses is likely an even more effective path forward. A bill such as HB 2723, which passed the Legislature in 2020 but was vetoed by the Governor due to Covid-19 budget concerns, would dramatically reduce the incentive of Washingtonians to buy ORV’s tax-free by closing the loophole created by Washington’s reciprocity for ORV licenses. Other states bordering Oregon have already eliminated reciprocity laws and have had very good results.

Unlike on-road vehicles, Oregon ORV license tags, which are valid for two years, can be purchased online for $10.50 by anyone. And because Washington allows Oregon ORV tags to be used on our state lands, residents are able to avoid paying sales tax on ORVs purchased in Oregon.

According to figures provided by Washington state motorsports dealers, eliminating this “reciprocity loophole”, along with educating Washington residents regarding the law and increasing penalties, would help recover an estimated 2,674 units per year, which equates to $30 million in lost sales to Oregon. This would be a win/win/win situation. The existing dealers in the state would be more profitable and be able to provide more family wage jobs. Motorsports dealers estimate that recovering these lost sales would support several more dealerships being able to open. It would also provide the state with much needed additional sales tax revenue and it would provide the Department of Natural Resources with yearly revenue through the renewal of the ORV permits in Washington instead of Oregon.”

-Washington State Motorsports Dealers Association