

Clearinghouse Rule 06-101

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY

The Wisconsin Department of Transportation proposes an order to repeal TRANS 156.05(2) and (3); renumber TRANS 156.05(4); and amend ch. TRANS 156(title), 156.01(2) and (3), 156.03(1)(a), 156.04(1)(c), (2)(a) to (d) and (f), and 156.05(1)(a) and (b), relating to the Automated Processing Partnership System Program; and to create ch. TRANS 141, relating to requiring motor vehicle dealers to issue vehicle titles and registrations electronically, unless exempted by the Department.

**NOTICE OF HEARING
AND
TEXT OF PROPOSED RULE**

NOTICE IS HEREBY GIVEN that pursuant to ss. 85.16(1), 227.11(2), 342.16(1)(am), Stats., and interpreting ss. 218.0116(1)(gr), 218.0146(4), 342.16(1)(a) and (am), Stats., the Department of Transportation will hold a public hearing in **Room 144-B** of the Hill Farms State Transportation Building, 4802 Sheboygan Avenue, Madison, Wisconsin on the **12th** day of **October**, 2006, at **10:00 AM**, to consider the amendment of ch. Trans 156 and the creation of ch. Trans 141, Wisconsin Administrative Code, relating to requiring motor vehicle dealers to issue vehicle titles and registrations electronically, unless exempted by the Department.

An interpreter for the hearing impaired will be available on request for this hearing. Please make reservations for a hearing interpreter at least 10 days prior to the hearing.

Parking for persons with disabilities and an accessible entrance are available.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 218.0116(1)(gr), 218.0146(4), 342.16(1)(a) and (am), Stats.

Statutory authority: ss. 85.16(1), 227.11(2), 342.16(1)(am), Stats.

Explanation of agency authority: The Department licenses motor vehicle dealers pursuant to ch. 218, Stats., and issues motor vehicle certificates of title and registration pursuant to chs. 341 and 342, Stats.

Related statute or rule: ss. 218.0111, 218.0116, 218.0152, 341.08, 341.21, 342.06 and 342.09, Stats.; chs. Trans 138 and Trans 139.

Plain language analysis: This proposed rule implements provisions enacted in 2005 Wis. Act 25 that require motor vehicle dealers licensed in Wisconsin to process applications for certificate of title for any vehicles the dealer sells. This proposed rule also specifies what categories of dealers are not required to process title and registration applications, and under what circumstances a dealer will be exempted from processing some of the dealer's transactions. The rule establishes penalties that DOT may impose on a non-exempt dealer, by law, required to process title and registration applications who fails to do so. The rule establishes a fee that a dealer will be charged by DOT for DOT to process the dealer's transactions, including not only those dealers or types of transactions that are exempted by DOT, but also a penalty for dealers who fail to comply with the law. The rule clarifies under what circumstances DOT may deny a dealer the authority to process title and registration applications, and the penalties that DOT may apply, including sanctions to the dealer's license.

Summary of, and preliminary comparison with, existing or proposed federal regulation: No federal regulations apply to the activities to be regulated by this rule.

Comparison with Rules in Adjacent States:

Michigan: Michigan law does not require motor vehicle dealers to process titles and registrations. Michigan does have a voluntary program called Dealer Direct, which allows dealers to contract with a vendor to process titles and registrations for dealers.

Minnesota: Minnesota law does not require motor vehicle dealers to process titles and registrations. Minnesota currently allows dealers to use a vendor to process titles and registrations for dealers, but the applications must be submitted to DMV through Deputy Registrars Offices rather than electronically.

Illinois: Illinois law does not require motor vehicle dealers to process titles and registrations. Illinois is currently beginning a voluntary program to allow dealers to use a vendor to process titles and registrations.

Iowa: Iowa currently has no law that requires motor vehicle dealers to electronically process titles and registrations. Iowa is currently considering a program for electronic processing by dealers.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: DOT utilized dealer sales volume and dealer sanction data to determine which dealers should be exempt from requirement to process title and registration applications. DOT considered DOT's data processing system requirements and scheduled programming to determine which transactions are exempt. DOT utilized its experience with dealer license requirements and contract requirements in the voluntary APPS program to determine what financial and contractual requirements apply to dealers.

Analysis and supporting documentation used to determine effect on small businesses: DOT analyzed dealer sales volume data to determine the exemption threshold. DOT analyzed its experience with dealer participants in the voluntary APPS program to determine financial, contractual, and reporting requirements for dealers under this law.

Effect on small business: This proposed rule implements a law that applies to all licensed motor vehicle dealers, some of which are small businesses. Effect on small business is that which results from the law. All licensed motor vehicle dealers are required to process title and registration applications, unless exempted by DOT. This rule exempts small dealers, which sell fewer than 4 vehicles a month or 48 vehicles per year, as DOT finds that these dealers likely do not have the computer hardware capability to engage in electronic processing. DOT has successfully operated a voluntary APPS program, in which small businesses (dealerships) participate in significant numbers. DOT has largely replicated that level of requirement in this mandatory program, as DOT has found this level is not onerous for small businesses. The Department's Regulatory Review Coordinator may be contacted by e-mail at andrew.ruiz@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on the liabilities or revenues of any county, city, village, town, school district, vocational, technical and adult education district, sewerage district, or federally-recognized tribes or bands. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and place where comments are to be submitted and deadline for submission: The public record on this proposed rule making will be held open until close of business the day of the hearing to permit the submission of comments in lieu of public hearing testimony or comments supplementing testimony offered at the hearing. Any such comments should be submitted to Carson Frazier, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 255, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857.

To view the proposed amendments to the rule, view the current rule, and submit written comments via e-mail/internet, you may visit the following website: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>.

TEXT OF PROPOSED RULE

SECTION 1. Chapter Trans 141 is created to read:

CHAPTER TRANS 141

ELECTRONIC ISSUANCE OF MOTOR VEHICLE TITLES AND REGISTRATIONS BY MOTOR VEHICLE DEALERS

Trans 141.01 Purpose and scope. This chapter interprets ss. 218.0116(1)(gr), 218.0146(4), 342.16(1)(a) and (am), which requires all licensed motor vehicle dealers to issue motor vehicle titles and registrations electronically for vehicles they sell, unless exempted by the department.

Trans 141.02 Definitions. The words and phrases defined in s. 340.01, Stats., have the same meaning in this chapter unless a different definition is specifically provided. In this chapter:

(1) "APPS" means the automated processing partnership system program established by the DMV, in which DMV contracts with agents and vendors to provide vehicle registration and titling services.

(2) "Certificate of registration" means the certificate of registration as described in s. 341.11, Stats., which documents that the proper vehicle registration fee has been paid for the current registration period.

(3) "Certificate of title" means the certificate of title for a vehicle as required in ch. 342, Stats.

(4) "Department" means the Wisconsin department of transportation.

(5) "DMV" means the Wisconsin department of transportation division of motor vehicles.

(6) "Exempt" means that a dealer is not required or not authorized to process certificates of title or certificates of registration.

(7) "Motor vehicle dealer" or "dealer" means a motor vehicle dealer as defined in s. 218.0101(23), Stats.

(8) "Process" means required and authorized to electronically submit applications for certificates of title or certificates of registration and update the DMV vehicle record.

(9) "Vendor" means a person, business or organization that contracts with the DMV to provide a host computer system by which agents may obtain access to specified information services of the DMV in order to process registration and title transactions.

Trans 141.03 Requirement to process certificates of title and registration.

(a) Unless exempted under s. Trans 141.06, all licensed motor vehicle dealers shall process certificates of title and registration for motor vehicles sold by the dealer. A licensed Wisconsin motor vehicle dealer who does not elect to satisfy this requirement by contracting with the DMV as described in s. Trans 141.04 shall process title and registration applications using the e-MV11 Internet-based web application offered by the department.

(b) A licensed motor vehicle dealer who processes title and registration applications using the e-MV11 Internet-based web application shall make application to the DMV on the DMV application form and shall comply with all applicable requirements, including those related to persons who have access to information subject to federal Driver Privacy Protection Act, 18 USC 2721-2725.

(c) A licensed motor vehicle dealer shall begin electronically processing title and registration applications using e-MV11 or under an approved APPS contract as described in s. Trans 141.04 within 30 days after the department approves the dealer's initial Wisconsin motor vehicle dealer license.

(d) The department may require a supplemental bond in addition to the bond required for licensing as a motor vehicle dealer under s. 218.0114(5)(a), in the following circumstances:

1. For a dealer that the department determines has insufficient funds to pay departmental registration and titling fees timely, or other similar situations.

2. For a dealer that the department determines has a history of errors in processing certificates of title and registration, or that has a history of not processing certificates of title and registration within statutory time requirements, or other similar situations.

Trans 141.04 Dealer participation in the APPS program. (1) A licensed Wisconsin motor vehicle dealer may satisfy its obligations under s. 342.16(1)(am), Stats., by contracting with the DMV as an agent in the APPS program under s. 341.21 (2), Stats. Participation in the APPS program allows a dealer to issue license plates to customers as well as process certificates of title and registration. A dealer who participates in the APPS program shall comply with all of the following:

(a) The motor vehicle dealer shall enter into an agreement with a vendor that is approved by the DMV under ch. Trans 156. A motor vehicle dealer may request service from, and enter into an agreement with, only one vendor.

(b) The motor vehicle dealer shall submit to the DMV a letter on company letterhead requesting appointment as a provider of processing or distribution services for vehicle registration or certificates of title. The letter shall include the legal business name and address of the physical location of the business.

(c) The department may require a supplemental bond in addition to the bond required for licensing as a motor vehicle dealer under s. 218.0114(5)(a), Stats.

(d) The motor vehicle dealer shall submit a signed agent contract to the DMV.

(e) The motor vehicle dealer shall be in compliance with all applicable laws governing the applicant's industry and not be under investigation by any regulatory or enforcement agency for suspected violations of applicable laws or regulations.

(f) The motor vehicle dealer shall employ at least one primary processing person and have at least one other employee trained as a back-up in order to ensure adequate service during business hours and that reports and documentation of registration and titling transactions are submitted to DMV within required time limits.

(2) The maximum fees that an agent who is a motor vehicle dealer participating in the APPS program may charge a customer shall be specified in the contract.

(3) A motor vehicle dealer may charge a customer any amount less than the maximum fee.

Trans 141.05 Termination of APPS dealer contracts. (1) DMV may terminate an APPS dealer contract or refuse to renew a contract with a motor vehicle dealer on the following grounds:

(a) Failure to provide information requested by DMV relating to the motor vehicle dealer's financial standing, solvency or compliance with motor vehicle related laws.

(b) DMV has reasonable cause to doubt the financial responsibility of the dealer licensee as prescribed in ch. Trans 140.

(c) DMV has reasonable cause to doubt the dealer's compliance with ss. 218.0101 to 218.0163, Stats., or rules interpreting ss. 218.0101 to 218.0163, Stats., where the violation constitutes grounds for denial, suspension or revocation of the dealer's license, stipulation to a conditional license or special order, the assessment of civil forfeitures or fines, or criminal prosecution.

(2) Reasonable cause under sub. (1) includes, but is not limited to, situations in which any dealer licensee has been found by the department, the division of hearings and appeals, or a court of law, to have violated ch. 218, Stats., or rules interpreting ch. 218, Stats., during the current or immediately preceding licensing period, or when the dealership has not given sufficient assurance that it has taken reasonable steps to prevent the recurrence of similar violations in future licensing periods.

(3) If a dealer's actions warrant termination of the agent or vendor from the program, DMV shall invoke termination provisions which are stated in the contract between DMV and the agent or vendor. The dealer shall be considered not authorized to process certificates of title and registration.

(4) If a dealer terminates the dealer's APPS contract, the dealer remains subject to the requirement of the law to process title and registration applications using the e-MV11 Internet-based web application offered by the department, and to all requirements of this chapter.

Trans 141.06 Exemptions from requirement to process certificates of title and registration. (1) EXEMPT MOTOR VEHICLE DEALERS. (a) A motor vehicle

dealer is not required to process certificates of title and registration if the motor vehicle dealer sells an average of 4 or fewer vehicles per month, or 48 or fewer vehicles per year.

(b) The department shall deny a motor vehicle dealer the authority to process certificates of title and registration for the following reasons:

1. DMV has reasonable cause to doubt the financial responsibility of a motor vehicle dealer as prescribed in ch. Trans 140, or the dealer's financial situation, as determined by the department in connection with the department review of dealer licensing requirements.

2. DMV has reasonable cause to doubt the accuracy or timeliness of the certificate of title and registration transactions performed by a motor vehicle dealer.

3. Failure or refusal of a motor vehicle dealer to provide DMV with any documents or information required for completion of a motor vehicle sales transaction.

4. DMV has reasonable cause to doubt a motor vehicle dealer's compliance with any provision of written policies and procedures regarding electronic processing, including failure to successfully complete departmental training and technical assistance provided or approved by the department.

5. Failure to provide information requested by DMV relating to a motor vehicle dealer's financial standing, solvency or compliance with motor vehicle related laws.

6. DMV has reasonable cause to doubt the dealer's compliance with ss. 218.0101 to 218.0163, Stats., or rules interpreting ss. 218.0101 to 218.0163, Stats., where the violation constitutes grounds for denial, suspension or revocation of the dealer's license, stipulation to a conditional license or special order, the assessment of civil forfeitures or fines, or criminal prosecution, including insufficient funds. Reasonable cause includes,

but is not limited to, situations in which any dealer licensee has been found by the department, the division of hearings and appeals, or a court of law, to have violated ch. 218, Stats., or rules interpreting ch. 218, Stats., during the current or immediately preceding licensing period, or when the dealership has not given sufficient assurance that it has taken reasonable steps to prevent the recurrence of similar violations in future licensing periods.

(c) If the department determines that any of the conditions in par. (b) are persistent and present after a reasonable time to cure, the department shall invoke sanctions against the dealer. Sanctions include any of the possible sanctions in s. 218.0116, Stats. A continuum of disciplinary actions may be taken beginning with informal advice, verbal warnings, advisory and warning letters, civil forfeitures, citations, special orders including suspension, denial, or revocation of the dealer's license to operate as a motor vehicle dealer.

(2) EXEMPT CERTIFICATES OF TITLE AND REGISTRATION. A motor vehicle dealer is not required to process certificate of title and registration transactions for a vehicle that is prohibited from successful registration processing because of an express limitation on the vehicle title, registration, or customer record, or on the e-MV11 internet-based web application or APPS. For these specifically identified vehicle transactions, the department may not charge a motor vehicle dealer a transaction processing fee for processing applications on behalf of the dealer. A motor vehicle dealer is required to submit certificate of title and registration applications to the department within 7 business days after a motor vehicle sale.

Trans 141.07 Fees. (1) FEES PAID TO MOTOR VEHICLE DEALERS BY CONSUMERS. A motor vehicle dealer may charge a fee to consumers for processing certificate of title and registration applications. The fee shall be a reasonable amount, as determined by the department. The fee shall be included in the service fee that the dealer may charge a consumer under s. Trans 139.05(8)(2). A motor vehicle dealer may not charge the consumer any amount to offset any monetary penalty that the dealer is required to pay under this section.

(2) FEES PAID BY MOTOR VEHICLE DEALERS TO THE DEPARTMENT.

(a) Any exempt motor vehicle dealer who is not required to process certificates of title and registration under s. Trans 141.06(1)(a) shall pay the department a fee for each certificate of title and registration transaction that the department processes on behalf of the dealer. The fee shall be \$15 per transaction. If an exempt motor vehicle dealer who is not required to process certificates of title and registration under s. Trans 141.06(1)(a) submits to DMV by fast service or by a customer service center an application to be processed by DMV, the dealer shall pay the department the \$15 transaction fee, in addition to any other required fees such as counter service fee or fast service fee.

(b)1. Any exempt motor vehicle dealer who is not authorized to process certificates of title and registration under s. Trans 141.06(1)(b) shall pay the department a fee for each certificate of title and registration transaction that the department processes on behalf of the dealer. The fee shall include the following:

- a. A fee of \$15 per transaction to process the transaction.
- b. A monetary penalty to the dealer, in the amount of \$50 per transaction. The dealer may not charge this monetary penalty to the consumer.

2. In addition to the fee and the penalty that the dealer shall pay to DMV, the department may begin disciplinary actions against the dealer's license as described in s. Trans 141.06(1)(c). If an exempt motor vehicle dealer who is not authorized to process certificates of title and registration under s. Trans 141.06(1)(b) submits to DMV by fast service or by a customer service center an application to be processed by DMV, the dealer shall pay the department the \$15 transaction fee and the \$50 monetary penalty, in addition to any other required fees such as counter service fee or fast service fee.

(c)1. Any non-exempt motor vehicle dealer who fails to process certificates of title and registration as required under s. Trans 141.03 shall pay the department a fee for each certificate of title and registration transaction that the department processes on behalf of the dealer. The fee shall include the following:

a. A fee of \$15 per transaction to process the transaction.

b. A monetary penalty to the dealer, in the amount of \$50 per transaction. The dealer may not charge this monetary penalty to the consumer.

2. In addition to the fee and the penalty that the non-exempt dealer shall pay to DMV, the department may begin disciplinary actions against the dealer's license as described in s. Trans 141.06(1)(c). If a non-exempt motor vehicle dealer submits to DMV by fast service or by a customer service center an application to be processed by DMV, the dealer shall nevertheless pay the department the \$15 transaction fee and the \$50 monetary penalty, in addition to any other required fees such as counter service fee or fast service fee.

(d) The department may not charge a processing fee to any motor vehicle dealer for any transaction that the dealer is not required to process under s. Trans 141.06(2).

Trans 141.08 Records. (1) A motor vehicle dealer shall forward to the department within one business day after completing processing a transaction the following paper documents:

(a) Original certificate of title that was submitted from the prior owner, or original manufacturers statement of origin for a newly titled vehicle.

(b) Copy of the receipt generated by the computer at the completion of the transaction, or the original signed copy of the application for certificate of title.

(c) Original signed odometer statement on the MV11 form if the odometer statement is not included on the certificate of title from the prior owner or on the original manufacturers statement of origin for a newly titled vehicle.

NOTE: Form MV11 can be obtained by writing to or calling GMA Printing, 136 West Main Street, Whitewater, WI 53190--(800) 747-4647 (phone), (262) 473-4575 (fax); Reynolds & Reynolds, 10533 West National Avenue, Suite 205, Milwaukee, WI 53227—(877) 287-3183 (phone), (800) 531-9055 (fax); or WATDASI Forms, P. O. Box 5345, Madison, WI 53705—(800) 236-7672 (phone), (608) 251-5557 (fax).

(2) All records required to be kept by a motor vehicle dealer shall be retained for 5 years. The records may be retained in electronic format as determined by the department, or in paper format as determined by the department.

SECTION 2. Chapter Trans 156(title) is amended to read:

~~AUTOMATED PARTNERSHIP PROCESSING~~ PARTNERSHIP SYSTEM PROGRAM

SECTION 3. Trans 156.01(2) and (3) are amended to read:

Trans 156.01(2) SCOPE. This chapter governs administration of the automated ~~partnership processing~~ partnership system, or APPS, program, authorized by s. 341.21, Stats.

(3) APPLICABILITY. This chapter applies to any person performing either title and original registration services, or registration renewal services, who uses automated

transmittal of transactions to the DMV. This chapter also applies to any vendor providing automated interface between agents and the DMV in the APPS program. This chapter does not apply to licensed Wisconsin motor vehicle dealers who participate in the APPS program to meet their obligations under s. 342.16(1)(am), Stats. Licensed motor vehicle dealers are subject to the requirements of ch. Trans 141. This chapter does not apply to persons who issue temporary registration plates under ch. Trans 132.

SECTION 4. Trans 156.03(1)(a) is amended to read:

Trans 156.03(1)(a) A request to participate as a vendor submitted to the Wisconsin Department of Transportation, DMV Bureau of Vehicle Services, ~~Third Party Programs Dealer and Agent~~ Section, P. O. Box 7909, Madison, WI 53707–7909.

SECTION 5. Trans 156.04(1)(c), (2)(a) to (d) and (f) are amended to read:

Trans 156.04(1)(c) The applicant shall provide a surety bond or letter of credit along with the request for appointment in a form prescribed by the DMV. The bond or letter of credit shall be \$10,000 for an agent doing renewal transactions and \$25,000 for an agent doing title transactions and original registration. The bond shall indemnify the department against claims arising from the acts or omissions of agents under the contract including, but not limited to, missing or stolen license plates, stickers, and temporary certificate of registration paper stock. The requirement for a bond does not apply to units of government, ~~or to dealers which are bonded and regulated by the department,~~ or to financial institutions.

(2)(a) The type of business the ~~vendor~~ [agent] is in.

(b) The ~~vendor's~~ [agent's] familiarity with and relationship to Wisconsin motor vehicle titling and registration.

(c) The ~~vendor's~~ [agent's] past practice, reliability, and record of customer service.

(d) The amount of technical support the ~~vendor~~ [agent] is likely to need from DMV to competently process title or registration transactions.

(f) The results of background checks on the ~~vendor~~ [agent] and its owners and employees including arrest and conviction records.

~~NOTE: It was the intent of the department to use the word agent rather than vendor in sub. (2).~~

SECTION 6. Trans 156.05(1)(a) and (b) are amended to read:

Trans 156.05(1)(a) DMV has reasonable cause to doubt the accuracy or timeliness of the title and registration ~~Transactions~~ transactions performed by the agent or vendor.

(b) Failure of the agent or vendor to provide any documents or information required to complete a ~~Transaction~~ transaction.

SECTION 7. Trans 156.05(2) and (3) are repealed.

SECTION 8. Trans 156.05(4) is renumbered Trans 156.05(2).

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of August, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation