

Clearinghouse Rule 06-135

**PROPOSED ORDER OF THE STATE OF WISCONSIN
DEPARTMENT OF TRANSPORTATION
ADOPTING RULES**

The Wisconsin Department of Transportation proposes an order to amend TRANS 138.03(1)(a)(intro.) and (6); and create TRANS 138.08(5), relating to dealer facilities, records and licenses.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 218, Stats.

Statutory authority: ss. 85.16(1), 110.06, 218.0152, 227.11(2), Stats.

Explanation of agency authority: The Department licenses and regulates motor vehicle dealers. This rule making deals with the topic of sales facility locations.

Related statute or rule: Ch. 218, Stats., Ch. Trans 138 and 139, Wis. Admin. Code.

Plain language analysis: This rule amendment relates to temporary sales locations, such as at fairs or auto shows, by licensed Wisconsin motor vehicle dealers. Chapter Trans 138 requires that licensed dealers maintain business facilities in the state. In addition, ch. Trans 138 allows licensed Wisconsin dealers to conduct a certain number of sales at temporary sales locations during a year.

Recently, ch. Trans 138 was amended to permit out-of-state motor vehicle sellers, such as Internet vendors, to be licensed as dealers in this state and to sell vehicles to Wisconsin residents via the Internet or similar methods without having to maintain business facilities in the state.

This rule making clarifies two points. First, a licensed Wisconsin motor vehicle dealer's business facilities must be a permanent building in the state of Wisconsin. Second, persons who avail themselves of the out-of-state dealer licensing provisions available to internet sellers may not conduct face-to-face sales in Wisconsin without first obtaining permanent facilities in this state like any other Wisconsin based dealership. To conduct face-to-face sales within the state, a dealer must have a permanent facility in this state.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Motor vehicle dealers are not licensed by the federal government.

Comparison with Rules in Adjacent States:

Michigan: Requires dealers to be licensed and to have an established place of business in the state. Temporary sales locations require an additional application and 30 days notice. Different procedures are required depending if the temporary location is inside or outside the Michigan county of licensure.

Minnesota: Requires dealers to be licensed and to have an established place of business in the state. Requires notification by the dealer to the Department of Public Safety of temporary sales locations. Non-Minnesota dealers are ineligible to participate in face-to-face sales at temporary locations in Minnesota.

Illinois: Requires dealers to be licensed and to have an established place of business in the state. Sales at temporary sales locations are permitted. An application and fee are required.

Iowa: Requires dealers to be licensed and have an established place of business in the state. Temporary sales locations or display at "Fair," "Vehicle Show," or "Vehicle Exhibition" requires an application and fee. The Department (Transportation) may grant a variance from the requirements of these rules and grant a special limited permit for the display only of motor homes or travel trailers at a convention sponsored by an established national association, if the Department determines that granting the permit would not encourage evasion of these rules and that the public interest so demands. The Department may impose alternative permit requirements.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: There is currently one out-of-state dealer with Wisconsin dealer license that is exempt from Wisconsin's business facility requirement. From October 1, 2003, to September 30, 2005, there were nine out-of-state dealers that were exempt from the business facility requirement. None currently has approval to conduct sales at a temporary sales location. Of these nine out-of-state dealers, nine had previously received approval to conduct sales at temporary sales locations. All approvals have expired.

Analysis and supporting documentation used to determine effect on small businesses: This rule will affect any out-of-state dealers who are required to have a Wisconsin motor vehicle dealer license in order to sell to Wisconsin residents via face-to-face sales. This rule making will require such dealers to establish permanent offices in this state. So long as these dealers confine their sales to Internet, telephone or other remote sale methods, those dealers will be exempt from requirement of keeping a Wisconsin business facility. Such dealers will, however, be prohibited from selling vehicles at temporary sales locations, fairs and conventions. There are no businesses that hold a Wisconsin dealer license and are exempt from business facility requirement, which are currently allowed to hold sales at temporary sales locations.

Effect on small business: This proposed rule will have no impact on licensed Wisconsin motor vehicle dealers who have business facilities in Wisconsin and sell to

Wisconsin residents. These businesses will continue to be able to sell vehicles at temporary sales locations. This proposed rule will affect businesses that hold a Wisconsin dealer license, are not located in Wisconsin, and are currently exempt from the Wisconsin business facility requirement. There are currently no businesses in this situation.

This rule making may also limit out-of-state participants at car shows, conventions and fairs from selling motor vehicles at those events without first establishing Wisconsin business facilities. The Department's Regulatory Review Coordinator may be contacted by e-mail at ralph.sanders@dot.state.wi.us, or by calling (414) 438-4585.

Fiscal effect and anticipated costs incurred by private sector: No fiscal impact on any local government. No fiscal impact or anticipated costs incurred by the private sector as a result of this rule.

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 253, 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. Trans 138.03(1)(a)(intro.) and (6) are amended to read:

Trans 138.03(1)(a)(intro.) A permanent building in this state wherein there are facilities for:

(6) A motor vehicle dealer who is not located in this state, who accepts vehicle purchase orders or lease agreements placed by fax, telephone, the Internet, mail, or some other remote means from persons within this state, and who delivers vehicles to persons within this state is exempt from the dealer business facilities requirements of sub. (1), provided that the dealer maintains a business office in another jurisdiction at which the books, records and files pertaining to vehicle sales or leases to persons in this state are

maintained and the dealer makes these documents available to the department for inspection upon demand. Nothing herein shall be construed to exempt the dealer from the license requirement of s. 218.0114(1), Stats.

SECTION 2. Trans 138.08(5) is created to read:

Trans 138.08(5) The dealer maintains a permanent facility in this state in the manner required by s. Trans 138.03(1)(a).

NOTE: Dealers without permanent facilities in the state may not conduct any sales in this state, including sales at temporary locations, except as provided in s. Trans 138.03(6).

(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 December, 2006.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation