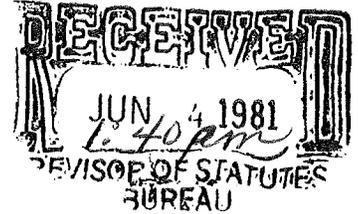


CR 80-186

C E R T I F I C A T E

STATE OF WISCONSIN)
) ss
DEPARTMENT OF TRANSPORTATION)



TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Lowell B. Jackson, Secretary of the Wisconsin Department of Transportation and custodian of the official records of the department, do hereby certify that the annexed rule TRANS 138, relating to Motor Vehicle Dealer Facilities and Records, was duly approved and adopted by this department in accordance with s. 227.026(1), Stats.

I further certify that the annexed copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation in the City of Madison, Wisconsin, this 3rd day of June, 1981.

Lowell B. Jackson
Secretary

8-1-81

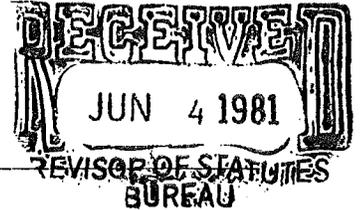
SECTION I

STATE OF WISCONSIN

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

In the Matter of the Proposed :
Renumbering and Amendment of : ORDER
Chapter MVD 13 to TRANS 138, : ADOPTING
Wis. Admin. Code, Relating to : RULE
Dealer Facilities and :
Records. :



CLEARING HOUSE RULE 80-186

Analysis by the Department of Transportation

This proposal involves the renumbering and amendment of Chapter MVD 13 to TRANS 138 as part of an overall restructuring and revision of departmental rules. There were a number of changes proposed in the rule, including some present policies and practices which had not previously been codified into rule. The following substantive changes are being proposed:

1. Presently an indoor display area limited to use for vehicle display is required. Because of energy concerns related to single use facilities, it is proposed in TRANS 138.03(1)(a)2 to allow additional uses of this area for vehicle preparation or repair purposes. This change would primarily affect used car dealers because new car dealer display areas are normally required by franchise agreements. The primary consumer protection concerns of vehicle inspection, disclosure of vehicle condition, repair availability, and permanent facilities would still be met. This section, TRANS 138.03(1)(a)1, also codifies present practice under s. 218.03(bf) Stats., that business facilities may be located in a residential facility in specified circumstances.
2. S. 218.01 (3)(a)30, Stats., and TRANS 138.03(1)(c) requires dealer and wholesaler premises to comply with local zoning, building code and permit requirements.
3. A new provision is included as an amendment to TRANS 138.04 (1)(a) that if a lending institution or manufacturer holds the manufacturer's statement of origin or title as security, a dealer may provide other evidence of ownership of vehicles offered for sale.

4. TRANS 138.04(1)(b) prohibits consignments between dealers and wholesalers to prevent wholesaler owned vehicles from being sold to the general public, to comply with s. 218.01(1)(0), Stats. which permits distributors and wholesalers to sell motor vehicles to only motor vehicle dealers. As a result of complaints received by the department, this section also prescribes the contents of acceptable consignment agreements.

5. In TRANS 138.04(1)(g), the vehicle sales records retention period is increased from 3 to 4 years to be consistent with federal requirements for retention of odometer statements.

6. TRANS 138.05(2) is a new provision requiring auction dealers to provide information on the selling dealer and the state the vehicle is titled in to help identify vehicles which may have tampered odometers.

7. TRANS 138.07 requires furnishing the department with a copy of the business property lease agreement whenever a business facility is being used for the first time by that applicant. This is a modification of present policy which required submittal of a copy of the lease agreement whenever modified.

8. TRANS 138.08 is a new policy allowing licensed motor vehicle and mobile home dealers to display and sell vehicles at temporary non-licensed sites, subject to certain restrictions. This section was included as a result of a Transportation Commission order (#H60) dated May 15, 1979 and a subsequent Dane County Circuit Court memorandum decision of February 11, 1980 (case #79-CV-2919), which recommended the department promulgate rules in this area.

Estimate of Fiscal Effect

The changes proposed in this rule will have no fiscal effect on state or local units of government.

A copy of the proposed rule may be obtained upon request from the Wisconsin Department of Transportation, Division of Motor Vehicles, Room 255, Hill Farms State Office Building, 4802 Sheboygan Avenue, Madison, Wisconsin 53702. (608) 266-2233.

TEXT OF PROPOSED RULE

Pursuant to authority vested in the Department of Transportation by ss. 110.06, 218.01(5), 218.12(6) and 227.014, Stats.,

the Department proposes to renumber, amend and adopt rules interpreting ss. 218.01(2)(d)1., 218.01(2a), 218.01(3)(a)30., 218.01(3)(bf) and (d), 218.01(7a), 218.11(3) and (7)(c), 218.32(4)(c), 341.51(3) and 342.16(1m) and (2), Stats., as follows:

SECTION 1. Chapter MVD 13, Wisconsin Administrative Code, is renumbered chapter TRANS 138.

SECTION 2. Sections TRANS 138.01 through 138.04 are renumbered 138.03 to 138.07.

SECTION 3. Section TRANS 138.01 is created to read:

TRANS 138.01. PURPOSE AND SCOPE. (1) As authorized by ss. 110.06, 218.01(5), 218.12(6) and 227.014, Stats., the purpose of this chapter is to administratively interpret ss. 218.01(2)(d)1., 218.01(2a), 218.01(3)(a)30, 218.01(3)(bf) and (d), 218.01(7a), 218.11(3) and (7)(c), 218.32(4)(c), 341.51(3) and 342.16(1m) and (2) Stats., relating to motor vehicle or mobile home dealer, motor vehicle wholesale, and motor vehicle auction dealer facilities and records.

(2) This chapter pertains to any person applying for or holding a Wisconsin motor vehicle dealer, mobile home dealer, motor vehicle wholesale dealer, or motor vehicle auction dealer license.

SECTION 4. Section TRANS 138.02 is created to read:

TRANS 138.02. DEFINITIONS.

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

(2) "Perfect or case bound" means a book that is permanently bound by gluing, stitching or both.

SECTION 5. Section TRANS 138.03 of the Wisconsin Administrative Code, as renumbered, is repealed and recreated to read:

TRANS 138.03 DEALER BUSINESS FACILITIES. (1) Business facilities required to be provided and maintained by motor vehicle dealers are:

(a) A permanent building where there are facilities for:

1. A business office to maintain the books, records, and files necessary to conduct business. The required business office may be established within a residence if it is directly accessible to an outside entrance and is used primarily for conducting such business.

2. A minimum 12 x 20 foot area accessible for automobile display, pre-sale preparation, or repair purposes. Motorcycle dealers who do not also sell automobiles shall provide an area of sufficient size to display, prepare, or repair at least 3 units. This indoor area may be established within a residential building if directly accessible by a separate outside entrance and used only for the purposes described in this subdivision.

3. A repair shop, or a service agreement with a nearby repair shop, where there are repair tools, repair equipment and personnel to service such vehicles. Any service agreement shall be on the form provided by the department.

(b) A vehicle display lot adjacent to the business office, unless all vehicles offered for sale are displayed within the business building. Such display lot is not required of a mobile home dealer, if also a licensed realtor and involved in mobile home sales solely as a result of real estate transactions and such mobile homes are offered for sale on-site.

(c) The business premises which provide all required facilities shall comply with local zoning, building code and permit requirements.

(2) Mobile home dealers are subject to the requirements of subdivisions (1)(a)1 and 3, and paragraphs (b) and (c).

(3) Motor vehicle wholesalers of used vehicles are subject to requirements of subdivision (1)(a)1, and paragraphs (b) and (c).

SECTION 6. Section TRANS 138.04 of the Wisconsin Administrative Code, as renumbered, is amended to read:

TRANS 138.04 RECORDS KEPT. The minimum of books and records required to be kept and maintained at the licensed business premises by licensed-Wisconsin motor vehicle and mobile home dealers and used motor vehicle wholesalers under sections ss. 218.01(3)(bf) and (d), 218.11(3) and (7)(c), and 342.16(2), Wis. Stats., and other-relevant-statutes-and-departmental-orders shall ~~consist of the following~~ include:

(1) Motor vehicle dealers:

(a) ~~Titles or other~~ As evidence of ownership, title for each used vehicle owned and offered for sale and MSO for each new vehicle owned and offered for sale. If a manufacturer or lending institution is holding the title or MSO to ensure payment at time of sale, the dealer shall have for each such vehicle either a factory invoice, a completed dealer reassignment form, or a purchase contract evidencing trade-in or purchase.

(b) Written consignment agreement between owner and dealer for each vehicle owned by an individual and offered for sale by such dealer. Consignments between dealers and wholesalers are prohibited. Such agreement shall contain:

1. Date of consignment;

2. Name of consignor and consignee;

3. Description of vehicle including year, make, and identification number;

4. Terms of agreement including duration of agreement, agreed upon selling price, and amount of sales commission.

5. A statement by the owner that either the vehicle is clear of any liens, or the amount of any outstanding lien balance; and

6. Signatures by the vehicle owner and selling dealer; and

7. Mobile home consignment agreements, for units offered for sale on-site, shall also include a provision that the dealer shall inform prospective purchasers in writing whether or not the rental lot site owner shall permit the unit to remain on the same rental lot site following sale.

(c) Vehicle general condition disclosure statements, as required by section s. MVD 24.03(5), Wis. Adm. Code.

(d) Odometer statement from prior owner and odometer statement to subsequent purchaser, as required by section s. MVD 24.03 (7)- (8), Wis. Adm. Code.

(e) Original or copy of motor vehicle purchase contracts, as required by section s. MVD 24.04, Wis. Adm. Code, purchase orders; and invoices. and-sales-tax-statements: Copy of MV1

Wisconsin title and registration application forms completed for each vehicle purchaser as additional evidence of sale and information regarding collection of sales tax and Wisconsin title and registration fees, when applicable.

(f) Records of every used vehicle (including executive and demonstrator vehicles) bought, sold, exchanged, or consigned shall be kept in a permanently bound (case or perfect bound) book ~~of not less than 8 1/2" x 11" in size~~; containing consecutively pre-numbered pages with horizontal line ruling. Initial purchase entries shall ~~shall~~ be made immediately as each vehicle is acquired and sales information entered on same line at subsequent time of sale. All entries shall be consecutively entered in ink and be legible. No blank horizontal lines shall be allowed. Vertical dividing lines shall be provided, and may be manually drawn, to divide the following information as shown:

Date Acquired	Acquired From Name & Address	Year-Make-ID	Date Sold Disposed of	Disposed of or Sold to Name & Address
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(g) Such used vehicle record book shall be maintained for 5 years, as required by s. 342.16, Stats., and all other required records shall be maintained for a period of 3 4 years from the date of sale: , including copies of factory invoices, dealer reassignment forms, consignment agreements, purchase contracts, MV1 Wisconsin title and registration applications, used motor vehicle general condition disclosure statements, prior owner odometer statements and dealer's subsequent odometer statements. Such records shall be kept in the place of business during business hours; and shall be open to inspection by a representative of the division department during reasonable business hours.

(2) Mobile home dealers, items included in subsection paragraphs (1)(a), (b), (e), (f), and (g).

(3) Motor vehicle wholesalers (used vehicles), items included in subsection paragraphs (1)(a), (d), (e), (f) and (g) as limited to used vehicle record book, invoices, dealer reassignment forms, prior owner odometer statements and wholesaler's subsequent odometer statements.

SECTION 7. Section TRANS 138.05 of the Wisconsin Administrative Code, as renumbered, is amended to read:

TRANS 138.05 AUCTION DEALERS. Motor vehicle wholesale auction dealers shall:

(1) For each vehicle offered for sale, either require the consigning dealer to deposit clear title or furnish title insurance at time of sale.

(2) Prominently display the selling dealer's name and address, and state in which the vehicle is titled, on each vehicle offered for sale, prior to each vehicle entering the auction sale building. Recommended methods are either affixing the information on the side window by grease pencil, or entering the information on a card plainly visible through either the windshield or side window.

(2) (3) Retain a copy of a properly completed, signed wholesale auction dealer reassignment form for each vehicle sold, and furnish 2 copies to the purchasing dealer and 1 copy to the selling dealer.

(3) (4) For each auction sale, maintain a complete listing of each vehicle offered for sale, which listing shall include:

including:

- (a) Date of sale;
- (b) Consigning dealer;
- (c) Vehicle year, make and ID number; and
- (d) Purchasing dealer.

{4} {5} Rescind the vehicle sale transaction if unable to furnish clear title to the purchasing dealer within 12 calendar days following date of sale, if so requested by the purchasing dealer.

SECTION 8. Section TRANS 138.06 of the Wisconsin Administrative Code, as renumbered, is amended to read:

TRANS 138.06 BUSINESS SIGN. All motor vehicle and mobile home dealers, motor vehicle wholesalers and motor vehicle wholesale auction dealers shall provide an exterior business sign in compliance with section s. 100.18(5), Wis. Stats.

SECTION 9. Section TRANS 138.07 of the Wisconsin Administrative Code is created to read:

TRANS 138.07 LEASE AGREEMENT. (1) Motor vehicle and mobile home dealers shall furnish a copy of a signed lease agreement with the dealer license application whenever first applying for a license for a business location, unless the business property is owned by the dealership entity.

(2) Such lease agreement shall name the dealer applicant as lessee and shall contain the following items:

- (a) Names of parties to the agreement;
- (b) Consideration for lease agreement;
- (c) Description of business premises;

(d) Term of lease; and

(e) Signatures of parties to the agreement.

SECTION 10. Section TRANS 138.08 of the Wisconsin Administrative Code is created to read:

TRANS 138.08 TEMPORARY SALES LOCATIONS. A motor vehicle or mobile home dealer shall be permitted to display and sell vehicles at a temporary site other than its licensed place of business, providing that:

(1) Each dealer furnishes the department with written notification of the sale at least 10 days in advance.

(2) The duration of each sale shall not exceed 10 days.

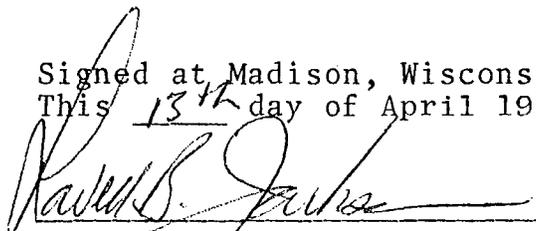
(3) A dealer may not participate in more than 6 sales during each licensing (calendar) year.

(4) Each participating dealer shall furnish each consumer a written notice of the 3-day "cooling off" rights pursuant to s.423.203, Stats., (The Wisconsin Consumer Act).

(END)

The rules contained in this order shall take effect upon publication as provided in s. 227.026(1) (intro.), Stats.

Signed at Madison, Wisconsin
This 13th day of April 1981.



Lowell B. Jackson, P.E.
Secretary
Department of Transportation