

CR 89-129

CERTIFICATE

STATE OF WISCONSIN)
) ss.
DEPARTMENT OF TRANSPORTATION)

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, RONALD R. FIEDLER, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to **the activities defining a motor vehicle dealer, wholesaler and motor vehicle auction dealer and exceptions thereto; the record keeping and facilities required of such dealers; and sales activities the department may permit after suspension, revocation, denial, or voluntary surrender of a motor vehicle dealer license**, was duly approved and adopted by this Department on **April 10th, 1991**.

I further certify that this 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 at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 10th day of April, 1991.

for Donald H. Dargatzis, Deputy
RONALD R. FIEDLER, P.E.
Secretary

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APR 12 1991

1:05 pm
Revisor of Statutes
Bureau

17-1-91

IN THE MATTER OF a rule to renumber s. Trans 138.02(1) and (2) and Trans 138.03(1)(c), renumber and amend s. Trans 138.03(2), amend ss. Trans 138.01 (title) and (1), 138.03(1)(a)1 and 2, 138.04(1)(b), 138.06(title) and (intro.) and 138.07(1), and create ss. Trans 138.01(3), 138.02(intro.), (1), (2), (4) to (6), and (8) to (14), 138.025, 138.027, 138.028, 138.03(2) and (3), 138.04(1)(b)7, 138.06(1) and (2), and 138.09, Wisconsin Administrative Code, regarding the activities defining a motor vehicle dealer, wholesaler and motor vehicle auction dealer and exceptions thereto; the record keeping and facilities required of such dealers; and sales activities the department may permit after suspension, revocation, denial, or voluntary surrender of a motor vehicle dealer license.

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Revisor of Statutes
Bureau**ORDER ADOPTING RULE**Analysis Prepared by the Wisconsin Department of Transportation

General Summary of Rule. The rule modifies ch. Trans 138 by codifying the department's policies on the definitions of a motor vehicle dealer, wholesaler and motor vehicle auction dealer, the sharing of facilities by two or more dealers, and the business activities permitted dealers after suspensions, revocations, denials, or voluntary surrenders of licenses. By doing so, it interprets pars. 218.01 (1) (e) & (n); par. 218.01 (2) (a); ss. 218.30 and 218.32; par. 218.01 (3) (bf); and s. 227.51 (2), Stats. The department's authority for this rulemaking is ss. 85.16 (1), 218.01 (5) and 227.11 (2), Stats.

In part, this rule is in response to a petition for rulemaking received August 3, 1987 from six motor vehicle dealers in Portage and Baraboo, Wisconsin: Interstate Auto Auction, Glacier Valley Ford & Mercury, Inc., Prothero Buick Company, Capener Motor Sales, Trecek Chevrolet-Oldsmobile, Inc., and Jenkins Motor Sales, Inc. Interstate Auto Auction was also licensed as a motor vehicle auction dealer. The petition requested an administrative rule interpreting s. 218.01, Stats., "as it applies to auction firms which auction businesses' and governmental entities' surplus motor vehicles as well as individuals' vehicles, and as it applies to businesses which sell their surplus motor vehicles."

Although ch. Trans 138, Wis. Admin. Code, now lists requirements for a motor vehicle dealer licensee, it does not define a motor vehicle dealer and thus indicate who must obtain a license. This rule clarifies and codifies the policies evolving from the department's case-by-case decisions on whether a specific business falls within the statutory definition of a dealer

found in par. 218.01 (1) (n), Stats. That definition mentions a wide range of activities involving the sale of motor vehicles, including selling, negotiating the sale or exchange of an interest in motor vehicles and renting with the option of purchase. The definition also includes persons who are "engaged wholly or in part in the business of selling motor vehicles" whether or not they actually own the vehicles. Only narrow exceptions are provided in par. 218.01 (1) (o), Stats., which permits unlicensed vehicle sales by public officials, persons acting under a court order, and financial institutions selling repossessed vehicles.

The sweeping character of the statutory definition of a motor vehicle dealer suggests that the legislature meant to cover a wide variety of commercial activities--not simply the conventional dealer role of executing retail sales at a permanent facility. The department has long recognized this intent by having developed broad meanings for many of the terms used in the definition. However, the department has also recognized the need to exempt citizens and businesses from the definition of a dealer when their involvement in the sale of motor vehicles is only a by-product or incidental effect of some other economic activity, such as the disposal of personal property. Limited exceptions are also justified on the grounds that a literal interpretation of the statutory definition would inhibit legitimate businesses from providing auxiliary services to dealers, since the dealer licensing requirements would greatly increase the costs of doing business in Wisconsin for advertisers, facility lessors, and others tangentially involved in selling vehicles.

A reasonable interpretation of the statutory definition therefore requires the department to distinguish between activities which fall within the letter and intent of the dealer licensing laws and significantly affect the laws' primary goal of protecting consumers, and those sales activities which are only incidental and have little impact on widespread consumer interests. In the past, the department has relied on three major grounds in making these distinctions:

1. The *primary purpose* of the sales activity: Are the vehicle sales incidental to vehicle ownership, or are they an important part of the business? The department has traditionally exempted persons who sell or trade-in their own vehicles when the vehicles have served the owners' private transportation needs. Under certain conditions, the department has also exempted retail auctioneers who sell off vehicles as agents of fleet owners or other private owners, since auctions are an efficient method of disposing of property.
2. The *proximity or immediacy* of the activity with respect to the final sale: Is the activity a general business service which indirectly contributes to sales and allows full accountability to rest with the licensed dealer? Or is it closely connected to the execution and terms of sales and deserving of regulation in order to protect consumers? By including such phrases as "offers or attempts to negotiate a sale" or being "engaged wholly or in part in the business of selling motor vehicles," the statutory definition of a dealer clearly covers more than the final execution of sales contracts. However, the department has long permitted businesses to conduct some activities--such as advertising, renting out display facilities, or other general business services--without a dealer license.

3. The *quantity* of sales activities. When used alone, the number of sales is not always helpful in distinguishing between dealers and nondealers. A person may be a dealer before he or she executes a single sale, while some large fleet owners may sell hundreds of their own vehicles and not fit the dealer definition. However, numerical criteria are sometimes useful in estimating more important distinctions, such as the purpose of vehicle sales. For example, an individual who buys and sells one or two privately titled vehicles per year is more likely to be using them exclusively for personal transportation needs than is someone whose annual sales are 10-15 vehicles.

The rule relies on these general principles and administrative precedents in defining a motor vehicle dealer.

First, the definition of a dealer includes persons who never own the vehicles they sell. The department continues its traditional practice of licensing "consignment" dealers, or businesses which sell vehicles in behalf of their owners. Such sales raise many of the consumer protection problems generated by dealers who take title of their vehicles, and their treatment as dealers is clearly anticipated by the language of subd. 218.01 (1) (n) 2, Stats.

Second, the department defines a dealer as encompassing persons conducting many types of activities, not just the execution of vehicle sales. "Offering" a vehicle for sale is treated as equivalent to selling. "Negotiating," another dealer activity, is defined to include as dealers those persons, sometimes called "brokers," who attempt to negotiate the details of sales on behalf of third parties.

Third, the department treats as dealers certain persons who provide services intended to aid the sale of motor vehicles. These activities include describing specific vehicles or the conditions under which the vehicles are available for sale or lease (with an option to buy). Such services may include advertising or displaying vehicles. To ensure that businesses directly involved in and profiting from the sale of motor vehicles do not evade the dealer licensing laws, the department has brought many of these activities under the definition of a dealer.

However, the rule also states that when these activities are performed for compensation unrelated to the sale of a vehicle, the person providing the service is not a dealer. This avoids applying the dealer licensing laws to businesses only involved in vehicle sales as providers of general, auxiliary business services, such as newspapers which advertise motor vehicles, lessors of property used for vehicle sales and other businesses whose compensation is arranged prior to and independent of actual vehicle sales.

The department has also recognized other situations where sales or sales-like activities do not require a license. The rule formalizes these policies by exempting the following persons from the definition of a motor vehicle dealer:

1. Persons whose activities are explicitly exempted from the statutory definition of a motor vehicle dealer by par. 218.01 (1) (o), Stats. They include persons appointed by or acting under the judgment or order of a court; public officers performing their official duties; sales finance companies selling vehicles

repossessed under the terms of a retail installment contract; and employees of such persons.

2. Persons who sell 5 or fewer of their own motor vehicles--used to serve their business or personal transportation needs--during any 12 month period. This is proposed as a simple criterion for distinguishing between persons "engaged in the business of selling motor vehicles" and those who are disposing of their own property as an incidental aspect of conducting another business. The 5 vehicle threshold is consistent with the federal definition of a "dealer" in 16 CFR Part 455 and is roughly consistent with subd. 218.01 (3) (a) 29, Stats.
3. Businesses that sell their own motor vehicles to licensed motor vehicle, whole-sale, motor vehicle auction, or salvage dealers when the vehicles were used primarily to serve their owners' transportation needs. This exemption permits business fleet owners to dispose of their vehicles with little inconvenience by selling to licensed dealers. Such sales raise few consumer protection issues.
4. Businesses that sell their own, *privately titled* motor vehicles to retail buyers when those vehicles were used primarily to serve their owners' transportation needs. The department allows business fleet owners who privately title their vehicles to sell them directly to consumers without a dealer's license. The private-title requirement means that none of the vehicles offered for sale may have been purchased for resale or lease purposes. None may be titled to a manufacturer, converter, wholesaler, dealer, lease or rental company.
5. Retail auction companies who sell or offer to sell vehicles on behalf of exempt persons, provided the auctions satisfy the following conditions:
 - (a) Each sales event, distinct in place and time, includes only those vehicles belonging to one person; or it includes up to but no more than 3 vehicles owned by more than one person. A "person" may include an individual, firm, association, or corporation and its subsidiaries or divisions. By limiting the number of owners involved in the sale, this condition emphasizes the private character of the event, in which a person is disposing of his or her property rather than setting up a continuing business where inventory is replenished with vehicles from a variety of sources. The policy also protects consumers. Sales which involve a small number of owners provide information to consumers about the past usage of the vehicles by emphasizing the person or business who used the vehicles.
 - (b) If the vehicles are sold at an auction, the auction may not take place on the premises of a licensed dealer or where otherwise exempt vehicle sales are regularly or frequently conducted. This provision prevents an auction firm from mixing exempt and non-exempt sales, and from setting up a permanent place of business

for exempt sales. A permanent, exempt motor vehicle auction business would be contrary to the intent of these provisions, which were designed to permit temporary, *ad hoc* procedures for disposing of privately used vehicles.

6. An employee of a licensed dealer. Salespersons, dealer agents, and other persons may sell, negotiate the sale, or provide services intended to aid the sale of motor vehicles without a dealer's license if a dealer fully controls and thus accounts for their activities. If, on the other hand, a person buys or sells motor vehicles independently, then that person needs a dealer's or wholesaler's license. The definition of "wholesaler" exempts a person from dealer licensing requirements only if that person receives compensation from one and only one dealer, carries out all financial transactions in the name of that dealer and using that dealer's accounts, and does not conduct an independent business of buying and selling motor vehicles.

Table 1 summarizes the effects of these definitions on various businesses.

In addition to the dealer definitions, this rule would change ch. Trans 138's requirements concerning dealer facilities and add a section describing permissible actions after revocations, denials, suspensions, and voluntary surrenders of licenses. First, the department codifies its policies on dealers who share the same facilities, such as a building or outdoor display lot. The rule demands that each dealership display a sign and separate its outdoor display area from the areas used by other dealers.

Second, the rule adds a new section which codifies the department's interpretation of s. 227.51 (2), Stats., regarding denial of a dealer license as well as the department's policies on the permissible business activities of a motor vehicle dealer after the department suspends the dealer's license. The rule permits a currently licensed dealer whose license is denied for the following year to request a hearing on the denial and continue to do business normally, pending the administrative decision on the review hearing. It also allows a dealer whose license is suspended to continue to engage in businesses not regulated by the department. The department's guidelines on separating regulated and non-regulated parts of the business during the suspension are also formalized.

Third, the rule creates a new procedure permitting a dealer whose license has been denied or revoked to sell off existing inventory. The guidelines are intended to allow a dealer to go out of business in a regulated manner without undue risk to retail consumers or the motor vehicle trade. Under the new rule, the department may permit a dealer whose license is denied or revoked up to 30 days to sell vehicles already in inventory to wholesale buyers. Similar guidelines are provided for dealers who voluntarily surrender their license to the department.

Table 1. Activities Requiring and Not Requiring A Motor Vehicle Dealer's License

Type of Business	Activities Not Requiring a License	Activities Requiring a License
Persons specifically exempted by par. 218.01 (1) (o), Stats.	<ul style="list-style-type: none"> • Governments, persons acting under a court order, and financial institutions selling vehicles obtained through repossessions or foreclosures may sell vehicles without a dealer license. 	<ul style="list-style-type: none"> • No conditions imposed on such sales.
Fleet owners--firms, corporations, associations, or other profit or nonprofit business organizations	<ul style="list-style-type: none"> • May sell own vehicles to wholesale buyers if sales are "incidental"--that is, if business' primary purpose is demonstrably distinct from selling motor vehicles, and if vehicles were used primarily for owner's business transportation needs. • May sell own vehicles to retail buyers if sales are "incidental" and if vehicles are privately titled. Excludes leasing and rental companies. • May employ unlicensed retail auction firms to sell vehicles if auctions satisfy "exempt" conditions. 	<ul style="list-style-type: none"> • Any vehicle sales to retail or wholesale buyers of vehicles not owned by fleet owner. • Employment of an auction company which fails to satisfy all conditions for exempt auctions. • Any retail sales by leasing or rental companies. • Any vehicle sales by a business which cannot show that it provides a service or product unrelated to the sale of motor vehicles and that the vehicles were used for transportation purposes.
Individual citizens	<ul style="list-style-type: none"> • May sell up to 5 of their own, privately titled vehicles per year. Vehicles may not have been bought or obtained for resale or leasing purposes. 	<ul style="list-style-type: none"> • Any buying or selling of motor vehicles for the purpose of resale. • Any retail sale of more than 5 motor vehicles within any 12 month period.
Unlicensed retail auction companies	<ul style="list-style-type: none"> • May sell vehicles owned by exempt persons, provided the auction satisfies following conditions: (1) Each auction includes only one person's vehicles, <u>or</u> it includes no more than 3 vehicles. (2) The auction is not held on the premises of a licensed dealer. (3) The auctioneer or company does not hold regular or frequent auctions at one location. 	<ul style="list-style-type: none"> • Any retail sales of motor vehicles owned by other persons, if those sales do not satisfy "exempt conditions" or if they are held regularly (for example, more than 2 times per year) at the same location.
Motor vehicle brokers and business services	<ul style="list-style-type: none"> • Businesses or membership organizations may provide general advice or information to consumers about buying or selling vehicles. • Businesses may provide services displaying or describing specific vehicles for sale if their compensation is not affected by actual vehicle sales. 	<ul style="list-style-type: none"> • Any displaying, describing, or advertising vehicles offered for sale if the compensation received depends on actual vehicle sales. • Any negotiating vehicle purchase contracts, including making agreements with dealers to sell vehicles under special terms.

Final Fiscal Estimate. The department estimates that there will be no direct fiscal impact from this rule. The department assumes that the rule will not produce any change in the number of motor vehicle dealer, wholesaler or auction dealer license applications received or processed by the department. Generally, the rule codifies long-standing department policies and does not alter the types of businesses already required to have such licenses. The rule marginally departs from current policy by narrowing the exemptions from the definition of a motor vehicle dealer. However, the department does not expect that the affected businesses, primarily fleet owners or retail auctioneers, will respond by applying for dealer licenses, since compliance with the dealer licensing prerequisites would force such companies to make major changes in their typical methods of operation.

Copies of Rule. Free copies of this rule are available upon request from the Wisconsin Department of Transportation, Dealer Section, P.O. Box 7909, 4802 Sheboygan, Room 806A, Madison, Wisconsin, 53707-7909, telephone (608) 266-1425; or from the Office of General Counsel, P.O. Box 7910, Madison, WI 53707, telephone (608) 266-8810.

Contact Persons. Persons having questions about the rule may write or call Thomas L. Gais, Wisconsin Department of Transportation, Dealer Section, P.O. Box 7909, Madison, Wisconsin, 53707-7909, telephone (608) 267-2316. Legal questions may also be addressed to Wisconsin Department of Transportation, Office of General Counsel, P.O. Box 7910, Madison, Wisconsin 53707-7910, telephone (608) 266-8810.

TEXT OF RULE

SECTION 1. Ch. Trans 138 (title) is amended to read:

CHAPTER TRANS 138

DEALER FACILITIES, AND RECORDS, AND LICENSES

SECTION 2. Trans 138.01 (title) and (1) are amended to read:

Trans 138.01(title) AUTHORITY, PURPOSE AND SCOPE. (1) As authorized by ss. ~~410.06~~ 85.16 (1), 218.01 (5) and ~~227.014~~ 227.11 (2), Stats., the purpose of this chapter is to interpret ss. 218.01 (1) (e), 218.01 (1) (n), 218.01 (2) (d) 1, 218.01 (2a), 218.01 (3) (a) 30, 218.01 (3) (bf) and (d), 218.01 (7a), 218.30, 218.32 (2) and (4) (c), 227.51 (2), 341.51 (3) and 342.16 (1m) and (2), Stats., relating to the activities defining a motor vehicle dealer, wholesale dealer and motor vehicle auction dealer, and exceptions thereto; the records and facilities required of such dealers; and the business activities of motor vehicle dealers during or after

~~suspensions, revocations, denials or voluntary surrenders of licenses motor vehicle dealer, motor vehicle wholesale, and motor vehicle auction dealer facilities and records.~~

SECTION 3. Trans 138.01 (3) is created to read:

Trans 138.01 (3) One purpose of this chapter is to interpret the definition of a motor vehicle dealer found in s. 218.01, Stats., and that section's requirement that all motor vehicle dealers be licensed. The definition of a dealer is intended to cover a broad range of business activities relating to the sale of motor vehicles, yet it is also designed to give limited exemptions and thus ensure flexibility for individuals and businesses who wish to dispose of their private vehicles and provide advertising or other general business services to dealers.

SECTION 4. Trans 138.02 (intro.) is created to read:

Trans 138.02 (intro.) Words and phrases defined in ch. 218, Stats., have the same meaning in this chapter unless additional interpretations are specified.

SECTION 5. Trans 138.02 (1) and (2) are renumbered Trans 138.02 (3) and (7).

SECTION 6. Trans 138.02 (1), (2), (4) to (6), and (8) to (14) are created to read:

Trans 138.02 (1) "Auction dealer" means a person who for compensation takes possession, whether through consignment or bailment or any other arrangement, of a motor vehicle owned by a motor vehicle dealer and offers it for sale at an auction open only to motor vehicle dealers or wholesalers.

(2) "Compensation" means commission, money, goods, services, or other thing of value. The term includes any increase in the value or attractiveness of membership, affiliation, or employment with a club, association, corporation, government agency, or other organization.

(4) "Incidental sales" mean sales of motor vehicles incidental to their owner's primary business activities. Vehicle sales are incidental to their owner's primary business activities if the owner provides a service, manufactures a product, or is engaged in some other clearly

identifiable business activity which is demonstrably distinct from the sale of motor vehicles or their lease with an option of purchase; and if the vehicles are purchased and used primarily to serve the transportation needs of the owner's business or its employees in their work.

(5) "Lease with the option of purchase" means to rent or lease a vehicle to a person with an option or right to buy the vehicle, whether or not the option or right to purchase is described in the rental or leasing contract. The term includes offering contracts to prospective lessees.

(6) "Negotiate a sale or exchange of an interest in motor vehicles" means any bargaining by a person other than a prospective retail buyer over the terms of a motor vehicle sale, exchange, or lease with an option of purchase. The term includes establishing or offering to establish agreements with dealers or other vehicle owners concerning the conditions under which the owners may sell their vehicles or lease them with an option of purchase to any person or group of persons. Such conditions may include vehicle prices or discounts, formulas for determining prices, or criteria for determining a consumer's eligibility for these or other conditions of sale.

(8) "Privately titled" means a vehicle owned by a person who acquired the vehicle through a bona fide sales transaction in which anything of substantial value was exchanged to acquire ownership of the vehicle for purposes other than lease, rental or resale, and the person is not a motor vehicle manufacturer, final stage manufacturer, converter, distributor, wholesaler, motor vehicle dealer, auction dealer, or leasing or rental company.

(9) "Retail auctioneer" means a person who for compensation takes possession of a motor vehicle owned by another person, whether through consignment or bailment or any other arrangement, and offers the vehicle for sale to retail buyers by auction.

(10) "Sell" means to transfer or offer to transfer ownership of a motor vehicle for compensation, whether or not the person executing or offering to execute the transfer owns the vehicle. Selling includes displaying, depicting, or describing the vehicle to potential buyers and indicating by any means that the person is willing to sell the vehicle or accept an order for the vehicle's future sale or the sale of a similar vehicle. The term also includes executing or offering to execute a lease with a requirement that the lessee purchase the vehicle.

NOTE: This definition of "selling" includes the activities of consignment dealers, who may display vehicles and negotiate sales on behalf of the vehicles' owners but do not own the vehicles themselves.

(11) (a) "Services aiding the sale" of motor vehicles means describing or displaying specific vehicles or representing the conditions under which they are available for sale or lease with an option of purchase to prospective buyers or lessors. These services may include advertising, displaying vehicles, or soliciting bids on vehicles available for sale or lease with an option of purchase.

(b) The services in par. (a) do not include providing general advice or information to prospective buyers, sellers, lessors, or lessees on issues concerning the buying, selling, or leasing of motor vehicles, provided the information does not include representations of specific vehicles available for sale or lease with an option of purchase.

(c) The services in par. (a) do not include a financial institution offering, negotiating, or consummating a motor vehicle loan.

(12) "Titled owner" means the person named as the owner on the face of the most recent certificate of title issued for the vehicle. The term does not include a person named in a reassignment of the title.

(13) "Used motor vehicle" has the same meaning as in s. Trans 137.03 (9).

(14) "Wholesaler" or "wholesale dealer" means a person, other than a licensed motor vehicle dealer or licensed motor vehicle auction dealer, who does any one of the following:

(a) Sells more than 5 used motor vehicles in any 12 month period to motor vehicle dealers, other wholesalers, motor vehicle auction dealers or salvage dealers;

(b) Purchases used motor vehicles at a motor vehicle auction dealer; or,

(c) Purchases used motor vehicles on behalf of motor vehicle dealers, unless the person buying the vehicles satisfies both of the following conditions:

1. The person is employed by and receives compensation from one and only one dealer for services related to the sale or purchase of motor vehicles; and

2. The person conducts all financial transactions involving the sale or purchase of motor vehicles in the name of the employing dealer, under the dealer's supervision, and using the dealer's funds and financial accounts.

SECTION 7. Trans 138.025 is created to read:

Trans 138.025 MOTOR VEHICLE DEALER LICENSE REQUIRED; EXCEPTIONS.

(1) DEALERS. Except as provided in sub. (2), any person engaging wholly or partly in the business of selling motor vehicles or exchanging, buying, leasing, providing services aiding the sale of motor vehicles, offering or attempting to negotiate a sale or exchange of an interest in motor vehicles for compensation, whether or not such vehicles are owned by such person, without first obtaining and maintaining a valid license under ch. 218.01, Stats., violates s. 218.01 (2), Stats.

NOTE: Examples of motor vehicle dealers include businesses that sell vehicles from their own inventories, persons who sell vehicles on consignment, and "buying clubs" or others who negotiate terms of sale in behalf of consumers or dealers, such as a membership organization which arranges special discounts for its members with dealers. Arranging such discounts constitutes "offering or attempting to negotiate a sale or exchange of an interest in motor vehicles for compensation," which is part of the statutory definition of a dealer. "Compensation" includes increasing the value of membership or affiliation with a club or association.

(2) EXEMPTIONS. The following persons are not required to hold a motor vehicle dealer license and, except as provided in this subsection, are exempt from the provisions of this chapter and s. 218.01, Stats.

(a) Express statutory exclusions. Any person described in s. 218.01 (1) (o), Stats.

(b) Limited private sales. Any person who sells or who offers or attempts to negotiate a sale of 5 or fewer used motor vehicles during a 12 month period, provided that the vehicles are privately titled to that person.

(c) Auxiliary business services. A person who provides services to prospective sellers or buyers which aid the sale of motor vehicles if and only if the service provider's compensation is determined prior to, and is completely independent of, the sale of any motor vehicle.

NOTE: This exemption is primarily intended to allow advertising companies, newspapers, magazine publishers, property lessors, and others to provide their usual business services to dealers without having to be licensed as dealers themselves, even though their services or activities may encourage or facilitate vehicle sales.

(d) Retail disposal of vehicles by business fleet owners. A corporation, firm, association, partnership, or other business that sells its own used motor vehicles to retail buyers, provided that all of the vehicles are privately titled to the seller; and that all vehicle sales are incidental.

NOTE: This exemption allows fleet owners to sell off their surplus property to retail customers without getting a dealer license. It does not apply, however, to companies which lease, rent, or manufacture motor vehicles, since their vehicles are not privately titled.

(e) Wholesale disposal of vehicles by business fleet owners. A corporation, firm, association, partnership, or other business that sells its own used motor vehicles, provided that all sales are made to licensed motor vehicle, wholesale, motor vehicle auction, or salvage dealers; and that all vehicle sales are incidental.

(f) Exempt auction services. A retail auctioneer in compliance with s. Trans 138.028.

(g) Licensed wholesalers. A wholesaler in compliance with s. Trans 138.027.

(h) Licensed salespersons. A motor vehicle salesperson licensed in accordance with s. 218.01 (2) (a), Stats., and acting within the scope of his or her employment with a licensed dealer.

SECTION 8. Trans 138.027 is created to read:

Trans 138.027 WHOLESALER. (1) No person may act as a wholesaler in this state without a valid wholesaler license under s. 218.01, Stats.

(2) A wholesaler may not sell motor vehicles to retail buyers.

(3) A wholesaler may not consign motor vehicles to a motor vehicle dealer.

(4) A wholesaler shall comply with ss. Trans 138.03 (5), 138.04 (1) (b) and (2), 138.06, 138.07 and this section, but is otherwise exempt from this chapter.

SECTION 9. Trans 138.028 is created to read:

Trans 138.028 RETAIL AUCTIONEERS. (1) LIMITED EXEMPTION. Notwithstanding s. Trans 138.025, a retail auctioneer selling motor vehicles may conduct business without a motor vehicle dealer license, provided the retail auctioneer meets all of the following requirements:

(a) None of the vehicles offered at auction are owned by a motor vehicle dealer, wholesaler, manufacturer, or other licensee under ch. 218, Stats.

(b) Each auction is clearly distinct in place and date and meets at least one of the following conditions:

1. It includes only those vehicles owned by a single person, where person means an individual, household, association, firm, or corporation including its subsidiaries and divisions;

or,

2. The auction includes no more than 3 motor vehicles.

NOTE: For example, an auctioneer may not need a dealer license when the auction only involves vehicles owned by one individual, corporation, or other "person". If the auction includes vehicles owned by 2 or more persons, the auctioneer or auction company usually needs a dealer license. The only exception occurs in very small consignment auctions, where no more than 3 vehicles are offered for sale at a single auction.

(c) The auction is not conducted on the permanent business premises of any motor vehicle dealer, wholesaler, wholesale auction dealer, or other person licensed under ch. 218, Stats.

(d) The auctioneer does not hold regular or frequent auctions under the conditions described in this paragraph at a single location. Frequent auctions at the same location include, though are not limited to, situations in which 3 or more vehicle auctions are conducted in the same place within 12 months.

SECTION 10. Trans 138.03 (1) (a) 1 and 2 are amended to read:

Trans 138.03 (1) (a) 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, presale 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.~~ Truck dealers who do not also sell automobiles are exempt from the requirements of this subdivision.

SECTION 11. Trans 138.03 (1) (c) is renumbered Trans 138.03 (4).

SECTION 12. Trans 138.03 (2) is renumbered Trans 138.03 (5) and amended to read:.

Trans 138.03 (5) Motor vehicle wholesalers of used vehicles are subject to ~~sub.~~ subd. (1) (a) 1, ~~and pars. par.~~ (1) (b), and ~~(e);~~ subs. (3) and (4).

SECTION 13. Trans 138.03 (2) is created to read:

Trans 138.03 (2) A residence, tent, or temporary stand is not a sufficiently permanent business facility within the meaning of this section. As used in this section and s. 218.01 (3) (bf) 1, Stats., "residence" means the domicile of a person who is an employee or owner of the dealership licensed, or applying for a license, under s. 218.01, Stats. "Residence" does not include a building either formerly used as a residence or used as a residence by persons having no interest in an existing dealership. A motor vehicle dealer licensed by the department prior to . . . [Revisor: insert effective date of this rule] despite having the required business office or indoor display or repair area in his or her residence may continue to use those facilities so long as ownership of the business remains unchanged and his or her dealer license is renewed continuously on or after . . . [Revisor: insert effective date of this rule].

SECTION 14. Trans 138.03 (3) is created to read:

Trans 138.03 (3) More than one motor vehicle dealer, wholesaler or other business may share a single permanent building.

(a) If a licensed motor vehicle dealer shares facilities with another motor vehicle dealer, wholesaler, or other business, each licensee shall:

1. Display a dealership sign which satisfies s. 6 of this chapter;
2. Separate its own vehicle display lot from areas used by other licensees; and
3. With each license application, provide a copy of the lease agreement between the owner of the property and the dealer along with a diagram of the facilities for the designated location. If the dealer sublets the facilities from a lessee, that dealer shall provide a copy of the sublease and a copy of the lease authorizing the lessee to execute subleases.

(b) Each licensee sharing a permanent building with another licensee shall satisfy all the requirements of paragraph (a) within 1 year after . . . [Revisor: insert effective date] or the license for each noncomplying dealership may be denied or suspended until the dealership facilities comply with this section.

(c) If the dealerships which share facilities also share majority ownership, they are exempt from the requirements of paragraph (a).

SECTION 15. Trans 138.04 (1) (b) is amended to read:

Trans 138.04 (1) (b) Written consignment agreement between owner and dealer for each vehicle not owned by an individual the dealer and offered for sale by ~~such~~ the dealer. Consignments between motor vehicle dealers ~~and wholesalers~~ are prohibited. Nor may wholesalers consign vehicles to motor vehicle dealers. ~~Such~~ Each consignment agreement shall contain:

1. Date of consignment;
2. Name of consignor and consignee;
3. Description of vehicle including year, make, and identification number, a description of the prior use of the vehicle and a disclosure of the odometer reading at the time of consignment indicating whether the reading is actual mileage, mileage in excess of the mechanical limits of the odometer, or not the actual mileage. The odometer statement may be separate from the rest of the consignment agreement;
4. Terms of agreement including duration of agreement, agreed upon minimum selling price at which the dealer is authorized to sell the vehicle for the consignee, the agreed disposition of any amount received for the vehicle above the minimum sales price, and the amount of the dealer's sales commission;

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

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

SECTION 16. Trans 138.04 (1) (b) 7 is created to read:

7. An agreement between the vehicle's owner and the dealer providing that the dealer will hold the title certificate for inspection by potential buyers during the period of consignment, that the title reassignment by the owner will not be signed until the vehicle is actually sold, and that if the vehicle is not sold during the duration of the consignment, the dealer will promptly return the title certificate to the owner along with the vehicle.

SECTION 17. Trans 138.05 (5) is amended to read:

Trans 138.08 (5) Rescind the vehicle sale transaction if unable to furnish clear title to the purchasing dealer within 12 ~~calendar~~ calendar days following date of sale, if so requested by the purchasing dealer.

SECTION 18. Trans 138.06 (title) and (intro.) are amended to read:

Trans 138.06 (title) BUSINESS SIGNS. All motor vehicle dealers, motor vehicle wholesalers and motor vehicle wholesale auction dealers shall ~~provide and~~ display the following signs: ~~exterior business sign in compliance with s. 100.18 (5), Stats.~~

SECTION 19. Trans 138.06 (1) and (2) are created to read:

Trans 138.06 (1) An exterior business sign in compliance with s. 100.18 (5), Stats. The sign shall state the name of the licensee, as shown on the department license and any other name under which the licensee does business as a motor vehicle dealer, wholesaler or auction dealer. The sign shall have lettering a minimum of 4 inches high, unless smaller dimensions are required in order to comply with a local zoning or sign ordinance.

(2) A sign posted on or adjacent to the entrance door describing the dealer's business hours.

SECTION 20. Trans 138.07 (1) is amended to read:

Trans 138.07 (1) Motor vehicle dealers and wholesalers 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.

SECTION 21. Trans 138.09 is created to read:

Trans 138.09 EFFECT OF SUSPENSION, DENIAL, REVOCATION OR VOLUNTARY SURRENDER OF LICENSE. (1) SUSPENSION. (a) No motor vehicle dealer may sell, offer to sell, or buy vehicles while his or her license is suspended.

(b) A motor vehicle dealer also engaged in business activities on the same premises which do not require a license issued by the department, such as the sale of motor vehicle accessories or repair of motor vehicles, may continue to conduct this unlicensed business while his or her license is suspended. However, if such activities are conducted within the indoor facilities the dealer ordinarily uses to display motor vehicles offered for sale or lease with an option of purchase, then during the suspension all motor vehicles offered for sale or lease shall either be removed from those facilities or moved to a location in those facilities not accessible to consumers.

(c) No licensed salespersons may be present at the dealership during the period of suspension, without the written permission of the department. The department may not grant permission unless the particular conditions of the salesperson's employment require his or her presence to perform duties unrelated to the activities regulated by the department under ch. 218, Stats.

(2) DENIAL. (a) Except as provided in par. (b), no person whose application for an initial motor vehicle dealer license has been denied may do business as a motor vehicle dealer.

(b) If the applicant held a valid license in the previous license year, the applicant may continue to do business after his or her application has been denied, as authorized under s. 227.51 (2), Stats., provided the applicant meets all of the following requirements:

1. At the time of the license application, the applicant was a motor vehicle dealer whose motor vehicle dealer license had neither expired nor been revoked.

2. The applicant applied for an identical license for the same dealership and was denied.

3. The applicant requested a hearing to review the license denial within 30 days of the department's denial.

4. The applicant paid all fees required for issuance of dealer registration plates for the new licensing period.

5. The applicant satisfied all of the requirements of s. 227.51(2), Stats.

(c) The department shall provide an applicant to whom par. (b) applies with dealer registration plates, salesperson licenses and a license for the dealership. The validity of all such licenses is conditional, pending the outcome of the review of the license denial. In the event the review by the commissioner of transportation affirms the license denial, the dealer shall collect and surrender to the department all registration plates, salesperson licenses and the dealer license issued under this paragraph. Salesperson licenses shall be surrendered immediately. Registration plates and the dealer license shall be surrendered within 30 days.

(d) The department may, upon request, permit an existing motor vehicle dealer continuously licensed during the preceding year, whose application for a license during the next

license period is denied, up to 30 days to sell the motor vehicles in the dealer's possession at the time of the denial, provided:

1. The dealer agrees to observe all special conditions imposed by the department.
2. The dealer's request is received by the department within 7 days of the date when the denial takes place and includes a list of all motor vehicles in his or her possession, including the vehicle identification number of each vehicle.
3. The dealer physically possesses the title certificate for each vehicle to be offered for sale.
4. Unless par. (b) applies, a dealer whose license has been denied may not offer, sell or lease with an option of purchase any motor vehicles to retail buyers and may not buy any vehicles, or accept motor vehicle trade-ins or consignments, during the 30-day period.
5. The 30-day period begins on the date of the department's letter denying the license. However, if par. (b) applies, the 30-day period begins on the date of the order of the office of the commissioner of transportation affirming the department's denial of the license.

(3) REVOCATION. (a) Except as provided in par. (b), no person whose motor vehicle dealer license has been revoked may do business as a motor vehicle dealer after the effective date of the revocation.

(b) Unless prohibited by the order of revocation, the department may, upon request, allow a motor vehicle dealer whose license is revoked an extension period, up to 30 days beyond the otherwise effective date of the revocation, to sell the motor vehicles in the dealer's possession at the time of the revocation, provided:

1. The dealer agrees to observe all special conditions imposed by the department.
2. The dealer's request includes a list of all motor vehicles in his or her possession, including the vehicle identification number of each.

3. The dealer physically possesses the title certificate for each vehicle to be offered for sale.

4. The request is made prior to the effective date of the revocation.

5. The dealer does not offer, sell or lease with an option to purchase motor vehicles to retail buyers and does not buy any vehicles or accept motor vehicle trade-ins or consignments.

(4) VOLUNTARY SURRENDER. The department may permit a motor vehicle dealer up to 30 days to sell motor vehicles in the dealer's possession at the time the dealer voluntarily surrenders his or her license, provided:

(a) The dealer agrees to observe all special conditions imposed by the department.

(b) The dealer provides the department a list of all motor vehicles in his or her possession, including their vehicle identification numbers, within 7 days of the date when the license is received by the department.

(c) The dealer physically possesses the title certificate for each vehicle to be offered for sale.

(d) The dealer does not offer, sell, or lease with an option to purchase vehicles to retail buyers and may not buy any vehicles, or accept motor vehicle trade-ins or consignments, during the 30 day period.

(e) The 30-day period begins on the date the department receives the license or the list of vehicles in the dealer's possession, whichever is later.

(END OF RULE TEXT)

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Bureau

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.), Wis. Stats.

Signed at Madison, Wisconsin this 10th day of April, 1991.

Annex 14) by 2.000, Deputy
for Ronald R. Fiedler, P.E.
Secretary
Wisconsin Department of Transportation

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Wisconsin Department of Transportation

Tommy G. Thompson
Governor

Ronald R. Fiedler, PE
Secretary

OFFICE OF GENERAL COUNSEL
P. O. Box 7910
Madison, WI 53707-7910

April 12, 1991

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Revisor of Statutes
Bureau

Mr. Gary Poulson
Assistant Revisor of Statutes
119 Martin Luther King, Jr. Blvd.
2nd Floor
Madison, Wisconsin 53703

RE: **CLEARINGHOUSE RULE 89-129**

In the Matter of the Adoption of **TRANS 138**, Wisconsin Administrative Code, relating to the activities defining a motor vehicle dealer, wholesaler and motor vehicle auction dealer and exceptions thereto; the record keeping and facilities required of such dealers; and sales activities the department may permit after suspension, revocation, denial, or voluntary surrender of a motor vehicle dealer license.

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 89-129**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

A handwritten signature in cursive script that reads "Julie A. Johnson".

Julie A. Johnson
Paralegal

Enclosures

cc: Tom Walker
Linda Thelke
Sandy Beaupre
Roger Cross
Tom Gais