

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

### **DealerAdvertisingGuidelines**

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DealerAdvertisingGuidelines, a proposed guidance document.

### **PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION**

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's

website: <https://trust.dot.state.wi.us/act369/?id=DMV1013&uri=file:DealerAdvertisingGuidelines&division=DMV&tags=DAS>

2. Mailing written comments to:

Division of Motor Vehicles  
Wisconsin Department of Transportation  
4822 Madison Yards Way  
PO Box 7336  
Madison, WI 53707-7336

### **WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT**

The final version of this guidance document will be posted at [wisconsin.gov](http://wisconsin.gov) to allow for ongoing comment.

### **AGENCY CONTACT**

[DOTDMVGuidanceDocs@DOT.WI.GOV](mailto:DOTDMVGuidanceDocs@DOT.WI.GOV)

## AD WATCH: Dealer Advertising Guidelines

The Field Investigation Unit (FIU), part of the Division of Motor Vehicles (DMV), is responsible for enforcing advertising regulations for licensed Wisconsin motor vehicle, motorcycle, and recreational vehicle dealers.

Wisconsin State. Ch. 218, Wis. Admin. Code ch. Trans 139.03, and Wis. Admin. Code ch. Trans 142.03 establish rules for dealers regarding advertising practices.

Federal Regulations M and Z of the federal Truth in Lending Act (TILA), which govern advertising of consumer leases and financing, are also relevant to dealer advertising.

What follows are basic guidelines to advertising vehicles in Wisconsin. This is not an exhaustive list but an overview of common practices that both consumers and dealers should be aware of when presenting a vehicle for sale, whether online, in print, or another form of media.

### *Ads Must be Truthful and Factual*

#### MSRP

MSRP is the Manufacturer's Suggested Retail Price (MSRP). MSRP does not necessarily indicate the vehicle is sold at that price. To avoid confusion with consumers, whenever MSRP is presented alongside an advertised price a disclaimer must be included that states: "MSRP may not represent actual sales price."

Using MSRP to establish comparative savings on a used vehicle is expressly prohibited by [Wis. Admin. Code ch. Trans 139.03\(5\)](#), unless the vehicle is an executive or demonstrator, and they should be identified as such in the ad.

#### Fuel Economy

When fuel economy is presented in an advertisement, it must be made clear the estimates are from the EPA.

For example, a dealer could include a footnote in the ad that states: "Per EPA estimates."

A dealer is not required to provide fuel economy estimates in any advertising.

#### Model Year and If Used

An advertisement must include the model year and, if the vehicle is the current or previous model year, disclose if the vehicle is used. Using terms such as "low mileage", "X miles", "own owner," "demonstrator", or "executive" serve to indicate the vehicle is used.

## Range of Model Years

It is permissible to advertise a range of model years as long as you advertise a range of prices as well. For example, "Used Chevy Malibus, '15s to '19s, from \$8999 - \$14999."

## Damaged Vehicles

Advertisements of flood or water damaged vehicles must disclose the vehicle has been flood or water damaged.

Whenever 2 or more vehicles damaged by the same cause as a result of the same incident are advertised, the advertising must disclose the cause of the damage, regardless the extent of damage to the vehicles.

## Vehicle Awards

Vehicle awards can be advertised as long as the award source and year are stated in the advertisement and it matches the year of the vehicle being advertised. It is misleading to advertise a vehicle award for any year other than the advertised model year. For example, if advertising a 2018 Ford Fusion, you can only advertise a 2018 award such as "2018 Car and Driver Best Buy Award."

## Stock Numbers

If a dealer offers a sale price on a particular make or model, they must include at least one stock number of a vehicle being offered for sale at that price. If multiple vehicles are being offered for sale at that price, only one stock number is required. The stock number can be listed in the body of the ad or in the footnote.

## Vehicle Availability

[Wis. Admin. Code ch. Trans 139.03 \(10\)](#) does not allow a dealer to advertise a vehicle it does not have or cannot obtain quickly. The department will allow dealer groups to advertise vehicles offered for sale at other locations if the advertisement is on a dealer group's general website (or advertisement) and not a specific location. Specific locations can only advertise vehicles they have in their specific inventory.

Dealers should not advertise vehicles for which they do not have a title ([Wis. Admin. Code ch. Trans 138.04\(1\)\(a\)](#)), or have not yet been inspected for sale ([Wis. Admin. Code ch. Trans 139.04\(6\)](#)).

*Pricing Must Reflect the True Cost of Purchasing Vehicle*

## Advertised Prices

When advertising the price of a vehicle, the price must include all charges the customer must pay in order to purchase the vehicle, with the exception of tax, title, registration, and service fee (see more information on these fees below).

[Wis. Admin. Code. Ch. Trans 139.03\(3\)](#) explicitly allows the exclusion of the above-named fees from an advertised price, and nothing else. Other costs that might be passed on to the customer—including freight or destination charges, assembly, dealer set up, etc.—must be included in the advertised price.

## Tax, Title, Registration, and Service Fees

When these fees are excluded from an advertised price, a disclaimer must exist making it clear to the customer these fees will need to be paid.

For example, a disclaimer could state: “Price does not include tax, title, registration, and service fees.”

The disclaimer does not have to state the amount of any fee.

[Wis. Admin. Code. Ch. Trans 139.03\(3\)\(a\)](#) specifically refers to the existence of a “service fee”. Many disclosures will use similar or unrelated language that may imply a service fee, but these terms are not recognized by administrative code. Using phrases such as “dealer fee”, “processing fee”, “administrative fee”, or any other term except “service fee” is considered a violation of Wis. Admin. Code ch. Trans 139.03(3)(a).

## Dealer Discount vs. Rebate

A “dealer rebate” program or incentive is not permitted. Manufacturers offer “rebates”; dealers offer “discounts”. Therefore, dealers are prohibited from offering a “dealer rebate” and must disclose their incentive as a “dealer discount”.

## Qualifying rebates

To be consistent with FTC guidelines and expectations the DMV revised its interpretation of Wisconsin Administrative Code Trans 139.03(3) regarding qualifying rebates. The following is required:

*An advertised price or payment may only contain rebate discounts in which **every** customer will qualify for. If there is **any** qualification criteria that prohibits a customer from being eligible, the rebate cannot be included in the final advertised price or payment.*

Bundling these types of rebates is allowed if the following conditions are met;

- In print ads, (including billboards, dealership windows, hang tags, etc.), the rebates to all must be itemized. If not adjacent to the price or payment, the rebates must be listed in the end disclaimer.

- In radio, the rebates to all must be itemized. If not spoken adjacent to the price or payment, the rebates must be listed in the end disclaimer.
- On TV, the rebates to all must be itemized. If not adjacent to the price or payment, the rebates must be listed on the same screen as the price or payment in a readable disclaimer.
- On the internet, the rebates to all must be itemized. If not written adjacent to the price or payment, one could do one of the following:
  - a) Scroll over the price or payment to see the rebates
  - b) See the listed rebates “one-click away” (see below for more information about “one-click away”)
  - c) View the listed rebates in the comments section of the VDP (vehicle description page)
  - d) List the rebates at the bottom of the webpage as long as a reference is made near the “savings” or “final price or payment” that clearly refers the customer to the bottom of the page

For instance; a \$500 military veteran rebate may not be included in the advertised price because every customer who views the advertisement will not be a veteran. However, if a manufacturer offers a rebate everyone qualifies for, it may be included in the advertised price or payment.

<u>NOT ALLOWED</u>		<u>ALLOWED *</u>	
MSRP:	\$20,000	MSRP:	\$20,000
Military Rebate:	<u>-\$500</u>	Manufacturer Rebate:	<u>-\$500</u>
Final Price:	\$19,500	Final Price:	\$19,500 *
		Military rebate	-\$500
		First Time Graduate	-\$500

When it doubt, do not “do the math” for a customer when it comes to manufacturer rebates.

\* The TYPE and AMOUNT of the manufacturer rebate to all “should” be written adjacent to the final price or payment in the body of the ad and must include a footnote stating “Manufacturer rebates applied. Everyone qualifies.”

An advertisement can list all qualified rebates next to the advertised price or payment in the main body of the advertisement but may not be calculated into the final price.

Rebates offered by the Manufacturer’s designated finance company

For purchases – No finance rebates may be applied if one must purchase a vehicle from the Manufacturer’s designated finance company to qualify for the rebate.

Example: A dealer cannot apply a \$500 “MFG Finance Co” Bonus Cash to a price or payment.

For leases – Lease rebates which require one to lease through the Manufacturer’s designated finance company or an independent finance company are allowable and can be applied but the ad must state that one “Must lease through (name of finance company)”.

Example: \$2,500 Red Carpet Lease Cash applied. Must lease through “MFG Finance Co”.

## Employee Pricing

The “Employee Pricing” promotion is interpreted as a manufacturer program and vehicles are offered at the manufacturer’s employee price. If an “Employee Pricing” promotion is being offered solely by a dealership, not a manufacturer, the dealer must disclose this in their advertising by including the following statement; “Not a manufacturer program. Customer to receive [DEALER NAME] employee’s pricing.” The dealership must provide evidence of employee pricing policy to Dealer/Agent Investigators if requested to validate program.

## Trade-in value

Advertising a set trade value or a minimum trade value is allowable under [Wis Admin. Code ch. Trans 139.03\(4\)](#). However, advertising a vehicle price in an advertisement which includes the trade value is prohibited under the premise it is misleading to assume everyone purchasing a vehicle will have a trade-in. Additionally, an advertised price cannot include anything a consumer must contribute to receive that price, such as a trade or down payment.

For example: “We’ll give you \$3,000 or more for any trade” in an advertisement is okay. However, a dealer cannot advertise a vehicle, originally listed at \$12,000, for \$9,000 in the advertisement with a footnote stating, “Price includes \$3,000 trade or down payment.”

## Sign & Drive

Sign & Drive advertising is permissible if the only payment required to drive a vehicle off the lot is “tax, title, license and service fee”. If there is any situation in which a consumer may be required to pay more than “tax, title, license and service fee”, Sign & Drive may not be used. The advertised payment can only include rebates that every consumer qualifies for.

## Guaranteed Credit Approval

A dealer can advertise this if in fact they are willing to grant credit to everyone.

If a down payment is required to receive credit approval, the following disclaimer must be included in the advertisement: “Minimum down payment may be required.”

If receiving credit requires an individual to provide a down payment greater than 25% of the final purchase price after discounts and incentives, the dealer is not really financing the vehicle and the statement “Guaranteed Credit Approval” becomes misleading. Therefore, a Guaranteed Credit Approval

promotion is only permitted if the consumer may be required to provide a down payment less than 25% of the final purchase price after discounts and incentives.

## *Buy Payments and Promotions*

### When Advertising a Buy Payment

An advertisement containing a buy payment (e.g. "\$300/month") must also include the following:

- Number of months
- Annual percentage rate with the initials "APR" written after the rate
- Required down payment
- A disclosure that tax, title, registration, and service fees are extra

If no down payment is required, the ad must specifically state: "\$0 down payment" or "No down payment".

### When Advertising APR

If APR is advertised for a given length of time (number of months), the ad must also include:

- Cost of financing
- Down payment (or specify if no down payment required)

If only APR is advertised, no disclosures are required but the ad must state "to approved credit."

## *Lease Advertising*

Any leasing advertisements must clearly state "lease" next to the payment amount.

Leases must include the following terms:

- Total Due
- Number of months
- Security deposit (if none is required, ad must state this as well)

The Total Due is an added total and must include the following 4 items:

- First payment
- Down payment
- Security deposit
- Acquisition fee

None of these four components can be advertised more prominently than another

## *Considerations for Online Advertising*

## One Click Away

Material information relevant to an ad—such as disclaimers or a list of manufacturer rebates available on a vehicle—can be located up to “one click away” from the main advertisement presented on a webpage.

For example, a dealer can choose to include a link next to an advertised price that directs the customer to additional information on rebates, or a pop-up may be embedded into a webpage that will appear when the consumer scrolls over the advertised price. Both are considered “one click away” from the main advertisement.

When choosing to place material information “one click away” from the main advertisement, it’s important to do so in a way that will direct the customer to find the information.

For example, a dealer may put a link below an advertised price that reads: “Click here for important disclosures.” Or a dealer may choose to highlight the link using a special symbol, color, or font that will stand out from the rest of the ad.

It’s important not to “bury” material information by placing it in an unassociated webpage, or by using innocuous terms to describe a link. The dealer should not assume a customer will click on any link, or visit any other portion of their webpage aside from the main advertisement, unless they are given a legitimate reason to do so by information presented in the ad.

## Consistency

Consumers have many options for navigating to a dealer’s website and browsing vehicle ads. One consumer might begin looking for a vehicle through a search engine, while another may choose to go directly to a dealer’s homepage. In both cases the consumer might click through a completely different series of webpages to reach the same vehicle ad.

It’s important that material information, such as disclosures, are presented in a way that, regardless of how a consumer finds the vehicle ad, the consumer receives the same material information.

If a dealer chooses to include material information at multiple, discrete areas of their webpage, the information presented must be consistent to avoid confusion.

For example, a dealer includes a disclaimer on every new and used vehicle ad that states: “Prices do not include tax, title, registration, and service fee.” The dealer also chooses to include a disclaimer on their homepage that states: “Prices do not include tax, title, and registration.” The lack of the term “service fee” on the homepage disclaimer could lead to confusion as to whether the dealer assesses a service fee.

## Dealer Responsibility



Many dealers utilize a third-party vendor or service to maintain and update their webpage. Regardless of who is maintaining the webpage, it is ultimately the responsibility of the licensee to present the information in a manner consistent with Wisconsin law. Utilizing disclaimers that attempt to deflect liability (e.g. "Dealer cannot be held liable for data listed incorrectly" or "Customer is responsible for verifying accuracy of information presented in this ad") does not make a dealer immune to enforcement action.