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(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2007-08

(session year)

Joint

(Assembly, Senate or Joint)

Committee for Review of Administrative Rules...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

* Contents organized for archiving by: Stefanie Rose (LRB) (August 2012)



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4802 Sheboygan Ave., Rm. 115B
P O Box 7910
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Robert J. Marchant
Senate Chief Clerk
Room B-20 Southeast, State Capitol
Madison, Wisconsin 53707

May 16, 2008

Patrick E. Fuller
Assembly Chief Clerk
17 West Main, Room 401
Madison, Wisconsin 53707

RE: Proposed Administrative Rule **TRANS 137/138/139**
Notification of Legislative Standing Committees
CLEARINGHOUSE RULE 08-029

Gentlemen:

Enclosed is a copy of Clearinghouse Rule **08-029**, relating to **motor vehicle dealer franchise operations, record keeping and trade practices**. The rule is submitted to you for referral to the appropriate standing committees.

Sincerely,

Julie A. Johnson
Paralegal

JAJ/dim

Enclosure

cc: David Schmiedicke, DOA State Budget Director
Bruce Hoesly
Senator Robert Jauch
Rep. Dan LeMahieu
Lynne B. Judd
Chuck Supple
Carson Frazier

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

CR 08-029

The Wisconsin Department of Transportation proposes an order to amend TRANS 137.03(9)(b)3., 138.04(1)(a) and (3), and 139.03(5); and to create TRANS 137.03(8m), 138.02(11m), 139.02(19m), 139.035, 139.04(6)(a)4m. and 139.05(2)(fm), relating to motor vehicle dealer franchise operations, record keeping and trade practices.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the chief clerks of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

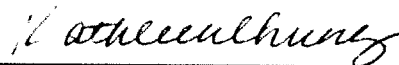
Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:



KATHLEEN CHUNG
Assistant General Counsel
Office of General Counsel
Department of Transportation
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P. O. Box 7910
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PART 1
Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Subchapter 1 of Chapter 218, Stats.

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

Explanation of agency authority: The Wisconsin Department of Transportation is authorized to license and regulate motor vehicle dealers and their trade practices. This rule making controls motor vehicle dealer trade practices, record keeping, and relevant definitions.

Related statute or rule: Chs. 218, 341, 342 and 429, Stats., chs. Trans 137, 138 and 139, Wis. Adm. Code.

Plain language analysis: This rule amendment makes several additions to chs. Trans 137, 138 and 139, regarding motor vehicle dealer requirements under Chapter 218, Wis. Stats. The rule additions clarify several authorized and prohibited actions by dealers, most of which the Department has previously clarified in policy.

1. Explicitly define in chs. Trans 137, 138 and 139 a "title" as a title in s. 342.10, Stats. While common understanding of the term has long prevailed, this will make the meaning clear.
2. Create a definition in ch. Trans 139 of "bird dogging," i.e., referral selling, and explicitly prohibit this practice. While this practice is prohibited in statute, which governs dealer behavior, DOT believes it would be appropriate to repeat the statutory prohibition in rule and elaborate on statutory definition.
3. In ch. Trans 138, clearly allow multi-location dealership records to be kept at a single location, with proper availability for inspection. This is implicit in rule reference to a dealership, and is currently allowed by DMV policy, but it would be appropriate to state explicitly, and to clarify what constitutes a single dealership with multiple locations as opposed to separate dealerships.
4. Amend the ch. Trans 137 definition of "used motor vehicle" to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The current definition effectively treats these vehicles as "new" for the purpose of needing a franchise to sell the vehicles.
5. Amend ch. Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmunds guide) as price comparison in advertising used vehicle prices.
6. Amend the ch. Trans 138 requirement that dealers have in their possession the title for any vehicles they offer for sale to exclude title of a manufacturer buy-back under the lemon law, instead allowing a dealer to have in its possession a copy of the title. Wis.

Stat. 218.0171(2)(d) requires that no manufacturer buy-back may be sold or leased to a new customer unless the manufacturer buy-back condition is fully disclosed to that customer. To protect themselves from liability, manufacturers have developed a disclosure form that they require dealers to submit to them before they will release the title to the dealer. In the meantime, the dealer keeps a copy of the title in its possession. DMV allows this by policy, and DMV wishes to clarify this in rule.

7. Amend ch. Trans 139 to clarify that if the dealer proposes to make changes to the warranty and service contract language in the Buyers Guide or in the Purchase Contract, the dealer shall send the proposed changes to DOT, which will reply within a certain time frame approving or denying the changes.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Wisconsin statutes and rules govern motor vehicle dealer sales practices and recordkeeping. No federal regulations apply to these policies.

Comparison with Rules in the Following States: Most of the proposed provisions are already DOT policy. With regard to the newly proposed provisions:

Michigan:

1. Michigan would consider a damaged rented or leased vehicle a "used" vehicle, similar to what DOT proposes in this rule making.
2. Michigan does not have regulations on this point, and thus would allow use of pricing guide, similar to what DOT proposes in this rule making.
3. Michigan regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Minnesota:

1. Minnesota would consider a damaged rented or leased vehicle a "used" vehicle, similar to what DOT proposes in this rule making.
2. Minnesota regulations regarding advertising are unclear to DOT, as the Minnesota Department of Public Safety does not regulate advertising.
3. Minnesota regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Illinois:

1. Illinois would consider a damaged rented or leased vehicle a "new" vehicle, similar to Wisconsin's current rule.

2. Illinois would allow use of pricing guide, similar to what DOT proposes in this rule making.

3. Illinois regulations require documents to comply with specific state law, similar to Wisconsin's current rule.

Iowa:

1. Iowa would consider a damaged rented or leased vehicle a "used" vehicle, similar to what DOT proposes in this rule making.

2. Iowa Attorney General's office does not review advertising related to car price.

3. Iowa regulations do not require verbatim language or approval of language in the purchase contract or disclosure statements, unlike Wisconsin current or proposed regulations.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: Most of the proposed provisions are already DOT policy. The following provisions are newly proposed:

1. Amend the ch. Trans 137 definition of "used motor vehicle" to include rental or leased vehicles with 4,000 or fewer miles that have been damaged. The Department has received several inquiries during the past few years from rental and leasing companies that need to dispose of damaged vehicles. The Department has concluded that allowing this exception to the new vehicle definition, for purposes of needing a franchise to sell, will not adversely affect franchised motor vehicle dealers.

2. Amend ch. Trans 139 to allow, instead of currently prohibit, the use of motor vehicle pricing guides (such as Kelly Blue Book or Edmunds guide) as price comparison in advertising used vehicle prices. This has been considered an unfair trade practice because price guides may not sufficiently account for vehicle condition. However, the Department recognizes that these pricing guides are readily accessible on the internet and in print, and consumers often make use of them. The Department proposes to couple allowing use of price guides with requirements for dealer disclosure of vehicle condition sufficient to protect a customer from making false inference about the vehicle's actual sales price and thus being taken in by false advertising.

3. Amend ch. Trans 139 to clarify that if the dealer proposes to make changes to the warranty and service contract language in the Buyers Guide or in the Purchase Contract, the dealer shall send the proposed changes to DOT, which will reply within a certain time frame approving or denying the changes. The Department recognizes that the vehicle manufacturing industry now offers "manufacturer certified used vehicle programs," which carry certain warranties; and current ch. Trans 139 does not sufficiently accommodate new industry practices. However, the Department proposal retains DOT authority to determine, on a case-by-case basis, an adequate disclosure to

the consumer of warranty provisions if they differ from mandatory language in ch. Trans 139.

Analysis and supporting documentation used to determine effect on small businesses: The Department bases the determination of effect on small businesses on comments, questions, and petitions and requests for regulation changes that the Department has received from motor vehicle dealers and their trade association, rental and leasing companies.

Effect on small business: Most provisions are already in Department policy. For those that are not currently in policy, the proposals will ease regulatory requirements and costs on motor vehicle dealers and vehicle rental and leasing companies. The Department enforces statute and rules through periodic auditing of motor vehicle records, inspection of motor vehicle dealership facilities, and investigation of consumer complaints. 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: 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.

Anticipated costs incurred by private sector: The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.

Agency contact person and copies of proposed rule: Copies of the proposed rule can be obtained, without cost by writing to Carson Frazier, Department of Transportation, 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 or via e-mail: carson.frazier@dot.state.wi.us.

PART 2
TEXT OF PROPOSED RULE

SECTION 1. Trans 137.03(8m) is created to read:

Trans 137.03(8m) "Title" means certificate of title issued by the Wisconsin department of transportation under ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

SECTION 2. Trans 137.03(9)(b)3. is amended to read:

Trans 137.03(9)(b)3. Has sustained damage while in-transit and has been acquired by the motor carrier from the motor vehicle manufacturer because of the

liability agreement between the manufacturer and carrier, or has sustained damage while being operated under a rental agreement as defined in s. 344.57(5), Stats., or a lease agreement under ch. 429, Stats., or

SECTION 3. Trans 138.02(11m) is created to read:

Trans 138.02(11m) "Title" means certificate of title issued by the Wisconsin department of transportation under ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

SECTION 4. Trans 138.04(1)(a) and (3) are amended to read:

Trans 138.04(1)(a) *Ownership records.* As evidence of ownership, title for each used vehicle owned and offered for sale and manufacturer's statement of origin, or 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 the 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. If the used vehicle is a manufacturer's buy-back under s. 218.0171, Stats., and the manufacturer holds title to the vehicle, the dealer may have in its possession a copy of the title.

NOTE: Section 218.0717, Stats., is commonly known as the lemon law.

(3) RETENTION REQUIREMENTS. The used vehicle information described in sub. (1) (f) shall be maintained for a period of 5 years, as required by s. 342.16, Stats., and all other required records shall be maintained for a period of 5 years from the date of sale, including copies of factory invoices, dealer reassignment forms, consignment agreements, purchase contracts, MV1 or MV11 Wisconsin title, registration or license plate applications, Wisconsin buyers guides, regular and conforming power of attorney forms, prior owner odometer disclosure statements, dealer's subsequent odometer

disclosure statements, lessor's notices to lessees relating to odometer disclosure required at end of lease, and lessee's odometer disclosure statement completed at end of lease. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by a representative of the department during reasonable business hours. Multi-location dealerships may keep records at a single location. If the location is out of state, the dealerships shall reimburse the department for actual and necessary expenses, plus wages pursuant to the appropriate state compensation plan or applicable labor agreement for examining the documents at that location. The actual and necessary expenses charged include the following:

(a) Travel expenses.

(b) Meal expenses.

(c) Lodging expenses.

(d) Telephone expenses.

(e) Copying and data processing expenses.

SECTION 5. Trans 139.02(19m) is created to read:

Trans 139.02(19m) "Title" means certificate of title issued by the Wisconsin department of transportation under ch. 342, Stats., or by another state in conformity with its applicable law, as evidence of ownership of a specific vehicle.

SECTION 6. Trans 139.03(5) is amended to read:

Trans 139.03(5) USED VEHICLE COMPARATIVE SAVINGS. The use of manufacturer suggested retail prices, wholesale or retail dealer pricing guides, or similar price guides to advertise comparative savings for used vehicles other than demonstrators or executives is an unfair practice and prohibited, except that a motor vehicle pricing guide may be used if the use of the guide as the source of the pricing is

stated in any required disclosure and the dealer makes the full objective documentation used to set the price available in writing to the customer.

SECTION 7. Trans 139.035 is created to read:

Trans 139.035 Unfair trade practices. (1) For purposes of this section, “bird-dogging” means an arrangement by a dealer or salesperson that provides consideration of any kind to a third party for sales leads, contingent upon a sale of a vehicle.

NOTE: Bird-dogging is also known as referral selling.

(2) Engaging in bird-dogging is an unfair trade practice and is prohibited.

SECTION 8. Trans 139.04(6)(a)4m. is created to read:

Trans 139.04(6)(a)4m. If a motor vehicle dealer proposes to use any language in the buyers guide that differs from that shown in subd. 4., the dealer shall submit the proposed language to the department. The department shall respond to the dealer within 30 days of receiving the proposed language as to whether the dealer may use the proposed language. The dealer may not modify the proposed language prior to receiving approval from the department to use the proposed language.

SECTION 10. Trans 139.05(2)(fm) is created to read:

Trans 139.05(2)(fm) If a motor vehicle dealer proposes to use any language in the purchase contract that differs from that shown in par. (f), the dealer shall submit the proposed language to the department. The department shall respond to the dealer within 30 days of receiving the proposed language as to whether the dealer may use the proposed language. The dealer may not modify the proposed language prior to receiving approval from the department to use the proposed language.

(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 15th day of **May**, 2008.



FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportatio



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

PART 3 CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **08-029**

AN ORDER to renumber Trans 139.02 (1); to amend Trans 137.03 (9) (b) 3., 138.04 (1) (a) and (3), and 139.03 (5); and to create Trans 137.03 (8m), 138.02 (11m), 139.02 (1) and (19m), 139.035, 139.04 (6) (a) 4m., and 139.05 (2) (fm), relating to motor vehicle dealer franchise operations, record keeping and trade practices.

Submitted by **DEPARTMENT OF TRANSPORTATION**

04-11-2008 RECEIVED BY LEGISLATIVE COUNCIL.

04-29-2008 REPORT SENT TO AGENCY.

RS:DLS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]
Comment Attached YES NO
2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]
Comment Attached YES NO
3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]
Comment Attached YES NO
4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]
Comment Attached YES NO
5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]
Comment Attached YES NO
6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]
Comment Attached YES NO
7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]
Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

Ronald Sklansky
Clearinghouse Director

Richard Sweet
Clearinghouse Assistant Director

Terry C. Anderson
Legislative Council Director

Laura D. Rose
Legislative Council Deputy Director

CLEARINGHOUSE RULE 08-029

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

- a. In item 3 of the plain language analysis, insert “be” before “appropriate.”
- b. In s. Trans 137.03 (8m) and elsewhere in the rule where the term “title” is defined, delete “properly” and substitute “under” for “pursuant to.”
- c. In s. Trans 137.03 (9) (b) 3., “under s. 344.57 (5), Stats.,” should be “as defined in s. 344.57 (5), Stats.”.
- d. In s. Trans 138.04 (1) (a), in the new language, insert “a” before “manufacturer’s” and delete “of” after “possession.” Also, delete “commonly known as the lemon law.”. Such a reference to the lemon law could be placed in a note after the text of this paragraph.
- e. In s. Trans 139.02 (1), “Bird dogging” should be “Bird-dogging.” The defined term could also be “Referral selling” rather than “Bird-dogging,” with a reference in a Note after the text of this subsection to “Referral selling is also known as “bird-dogging” or similar language. If “bird-dogging” is kept as the defined term, delete “, otherwise known as referral selling” and insert a similar note. (“Bird-dogging is also known as referral selling.”) Also, if new s. Trans 139.035 is the only provision that the term appears in, the term should be defined in that section and not in s. Trans 139.02.
- f. In s. Trans 139.03 (5), for clarity, substitute “if the use of the guide as the source” for “if the source.” Also, the subsection provides that “the full objective documentation used to set

the price is available to the customer.” In what form is this documentation to be made available? In writing? If so, that should be specified.

g. In s. Trans 139.035, insert “is” before “prohibited.”

h. In s. Trans. 139.04 (6) (a) 4m., in two places, the reference should be to “subd. 4.” and not to “s. Trans 139.04 (6) (a) 4.” In the second sentence, insert “as to” before “whether.” In the second sentence, insert “proposed” before “language” and delete “s. Trans 139.04 (6) (a) 4.” Also, insert “the” before “proposed.”

i. In s. Trans 139.05 (2) (fm), first sentence, substitute “par. (f)” for “s. Trans 139.05 (2) (f).” In the second sentence, insert “as to” before “whether.” In the third sentence, insert “proposed” before “language” and delete “s. Trans 139.05 (2) (f).” Also, insert “the” before “proposed.”

PART 4
CR 08-029

ANALYSIS OF FINAL DRAFT OF TRANS 137/138/139

(a) **Basis and Purpose of Rule.** Chs. Trans 137, 138 and 139 govern aspects of motor vehicle dealer franchise operations, record keeping, and trade practices. Several amendments are necessary to accommodate evolving industry environment and to clarify explicitly DOT's interpretation of statutory definitions. Also, currently ch. Trans 139 requires absolute verbatim wording to disclose manufacturers' or dealers' warranties in the Buyers Guide and in the Purchase Contract. In recent years, manufacturers have begun to offer "manufacturer certified used vehicle" programs, which often have their own warranty language. This rule amendment would allow dealers to request DOT approval of language to accommodate these new types of warranties.

(b) **Modifications as a Result of Testimony at Public Hearing.** The public hearing was held in Madison on 5-13-08. No modifications were made as a result of public testimony at the hearing.

(c) **List of Persons who Appeared or Registered at Public Hearing.** The following individuals appeared/registered at the hearing:

Christopher Snyder, General Counsel, Wisconsin Automobile and Truck Dealers Association, Madison, WI 53703—spoke in favor of the rule.

Mary Ann Gerrard, Legal Counsel, Wisconsin Automobile and Truck Dealers Association, Madison, WI 53703—registered in favor of the rule.

(d) **Summary of Public Comments and Agency Response to those Comments:** Christopher Snyder, General Counsel, Wisconsin Automobile and Truck Dealers Association, made two comments:

(1) WATDA offers for sale to its motor vehicle dealer members copies of DOT-approved forms. WATDA is concerned that DOT policy under this proposed rule will allow WATDA to obtain DOT approval for amendments to forms, under ss. Trans 139.04(6)(a)4m. and Trans 139.05(2)(fm), even though WATDA is not a dealer.

(2) WATDA recommends that DOT consider defining in this proposed rule the term "certified used vehicle," which refers to a specific manufacturer-provided inspection, warranty, and franchise sale program.

Agency Response: (1) DOT concludes that WATDA, or any forms vendor which sells forms to motor vehicle dealers, may seek DOT approval on behalf of those dealers, under ss. Trans 139.04(6)(a)4m. and Trans 139.05(2)(fm). As the responsibility is ultimately that of the dealer, it is not necessary to state this in the proposed rule.

(2) DOT concludes that the current rule and this amendment already allow motor vehicle dealers to advertise and offer vehicles for sale under a manufacturer-provided certified used vehicle program of inspection, warranty, and franchise sales. DOT concludes, therefore, that adding a definition of a manufacturer-provided certified used vehicle is unnecessary.

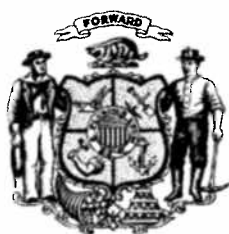
(e) **Explanation of any Changes Made to the Plain Language Analysis or Fiscal Estimate:** No changes were made.

(f) **Response to Legislative Council Recommendations.** The Legislative Council report contained numerous recommendations, all of which have been incorporated into the proposed rule.

(g) **Final Regulatory Flexibility Analysis.** Most provisions are already in Department policy. For those that are not currently in policy, the proposals will ease regulatory requirements and costs on motor vehicle dealers and vehicle rental and leasing companies. The Department enforces statute and rules through periodic auditing of motor vehicle records, inspection of motor vehicle dealership facilities, and investigation of consumer complaints. The Department estimates that there will be no fiscal impact on state or private sector revenues or liabilities.



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE REPORT TO AGENCY

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CLEARINGHOUSE RULE **08-029**

AN ORDER to renumber Trans 139.02 (1); to amend Trans 137.03 (9) (b) 3., 138.04 (1) (a) and (3), and 139.03 (5); and to create Trans 137.03 (8m), 138.02 (11m), 139.02 (1) and (19m), 139.035, 139.04 (6) (a) 4m., and 139.05 (2) (fm), relating to motor vehicle dealer franchise operations, record keeping and trade practices.

Submitted by **DEPARTMENT OF TRANSPORTATION**

04-11-2008 RECEIVED BY LEGISLATIVE COUNCIL.

04-29-2008 REPORT SENT TO AGENCY.

RS:DLS

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-029

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

- a. In item 3 of the plain language analysis, insert “be” before “appropriate.”
- b. In s. Trans 137.03 (8m) and elsewhere in the rule where the term “title” is defined, delete “properly” and substitute “under” for “pursuant to.”
- c. In s. Trans 137.03 (9) (b) 3., “under s. 344.57 (5), Stats.,” should be “as defined in s. 344.57 (5), Stats.”.
- d. In s. Trans 138.04 (1) (a), in the new language, insert “a” before “manufacturer’s” and delete “of” after “possession.” Also, delete “commonly known as the lemon law.” Such a reference to the lemon law could be placed in a note after the text of this paragraph.
- e. In s. Trans 139.02 (1), “Bird dogging” should be “Bird-dogging.” The defined term could also be “Referral selling” rather than “Bird-dogging,” with a reference in a Note after the text of this subsection to “Referral selling is also known as “bird-dogging” or similar language. If “bird-dogging” is kept as the defined term, delete “, otherwise known as referral selling” and insert a similar note. (“Bird-dogging is also known as referral selling.”) Also, if new s. Trans 139.035 is the only provision that the term appears in, the term should be defined in that section and not in s. Trans 139.02.
- f. In s. Trans 139.03 (5), for clarity, substitute “if the use of the guide as the source” for “if the source.” Also, the subsection provides that “the full objective documentation used to set

the price is available to the customer.” In what form is this documentation to be made available? In writing? If so, that should be specified.

g. In s. Trans 139.035, insert “is” before “prohibited.”

h. In s. Trans. 139.04 (6) (a) 4m., in two places, the reference should be to “subd. 4.” and not to “s. Trans 139.04 (6) (a) 4.” In the second sentence, insert “as to” before “whether.” In the second sentence, insert “proposed” before “language” and delete “s. Trans 139.04 (6) (a) 4.” Also, insert “the” before “proposed.”

i. In s. Trans 139.05 (2) (fm), first sentence, substitute “par. (f)” for “s. Trans 139.05 (2) (f).” In the second sentence, insert “as to” before “whether.” In the third sentence, insert “proposed” before “language” and delete “s. Trans 139.05 (2) (f).” Also, insert “the” before “proposed.”