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January 2021 Vol. 32 No. 1

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Changes to allowed service fee charges

In [January 2020](#), the department published a reminder on the appropriate use of the service fee authorized by Wis. Admin. Code ch. [Trans 139.05](#). Since that time we have revised the list of costs dealers can recoup from customers with a service fee:

- Perform vehicle safety inspection
- Complete Wisconsin Buyers Guide
- Inspect title to verify ownership and mileage
- Check for recalls. *Only franchised dealers qualify*
- Purchase and complete required forms and contracts
- Disclose lemon law notices and relevant manufacturer information
- Collect and remit taxes for customer purchases
- Safeguard Rule, Red Flags and OFAC compliance
- Required transaction document storage

This list includes many of the provisions allowed since 2002 but removes those items that don't fit within the scope of the law. This change is in response to the department discovering many examples of service fees being improperly calculated.

The law allows the department to determine whether a service fee is reasonable. Any service fee found to be unreasonable or noncompliant will result in disciplinary action and customer refunds. We encourage dealers to regularly review service fees to ensure they meet the above standards.

In contrast to many neighboring states, the law doesn't place a cap on the service fee so the industry can account for all market variables that affect their dealership. The department will continue to audit service fees and make additional amendments to this policy as needed to help maintain dealer success while avoiding consumer harm.

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Who can sell "junk" RVs?



Only licensed recreational vehicle (RV) dealers can sell "junk" RVs.

Someone who sells two or more new or used recreational vehicles in a calendar year is required to have a recreational vehicle dealers license per Wis.

Stat. [§218.11\(1\)](#) and Wis. Admin. Code ch. [Trans 142.02\(7\)\(b\)](#). A licensed recreational vehicle dealer

can sell an RV with a "junked" status on the title because RVs do not meet the definition of a **motor** vehicle, which is the triggering term requiring a salvage license.

However, recreational vehicles are included in the definition of a "vehicle" per Wis. Stat. [§340.01\(74\)](#), therefore all normal junking procedures must be followed. Any person owning or possessing a "junk" vehicle must declare the "junked" status to the department within ten days per Wis. Stat. [§342.34](#).

An RV with a junked title "status" is still an RV and 218.011(1) licensing requirements apply if selling them.

If you have any questions or concerns, please contact your Field Investigator.

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Dealer license renewals require updated leases

Dealer license renewals are too often delayed when the department does not receive all required information. This includes copies of your current valid lease. When in doubt, always submit a copy of your current lease when submitting a renewal application.

If you have any questions regarding dealer licensing, contact the Dealer Licensing Unit at (608) 266-1425.

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Advertising - comparative pricing on new and used vehicles

Advertising comparative pricing on motor vehicles means comparing the sale price of the vehicle to any other price or statement of value (also known as the “comparative price”). Comparative pricing is an effective way to let consumers know you have a great deal on a vehicle; however, it can also be misleading when not used correctly.



Several rules apply to the practice of advertising comparative savings on vehicles:

- Wis. Admin. Code ch. [ATCP 124](#) is known as the price comparison advertising rule. This rule prohibits the use of arbitrary or inflated price comparisons in advertising.
- Wis. Admin. Code ch. [Trans 139.03\(1\)](#) prohibits any use of deceptive or misleading advertising to induce the purchase of a motor vehicle.
- Wis. Admin. Code ch. [Trans 139.03\(5\)](#) is known as the used vehicle comparative savings rule. This rule outlines certain conditions under which used vehicles can be advertised with comparative savings.

- Wis. Stat. [§100.20\(1r\)](#) is specific to new vehicles and requires a disclaimer whenever the Manufacturer Suggested Retail Price (MSRP) is advertised alongside a sales price.

Let's take a look at how these rules affect motor vehicle advertising.

Advertising MSRP for new vehicles

Per Wis. Stat §100.20(1r), when an advertisement compares the selling price of a new vehicle to MSRP, the ad must include a disclaimer that states: "MSRP is a manufacturer's suggested retail price and may not represent actual sale prices."

As a suggested price, a vehicle might never actually be sold at MSRP. The prevalence of dealer discounts and manufacturer rebates further decreases the likelihood of a vehicle being sold to a customer at MSRP. The disclosure informs potential consumers that comparisons to MSRP are probably not the best measure of savings on a new vehicle.

Advertising used vehicle prices compared to a market guide

Using a motor vehicle pricing guide (e.g. Kelly Blue Book, NADA) as a comparative price is allowed when the source of the pricing is clearly and conspicuously disclosed in the advertisement.

For example, if a dealer lists a Market Value price and a Sales Price, and the Market Value price is based upon Kelly Blue Book valuation, the disclaimer should state:

"Market Value price reflects the Kelly Blue Book value of this vehicle in good condition."

The comparative price should be the value of a vehicle of the same model year, make, and mileage, and in good condition. When making a comparison using a motor vehicle pricing guide, dealers must have available in writing to a customer the objective documentation used to set the value of the vehicle.

Used motor vehicles cannot be compared to MSRP or wholesale pricing, although demonstrator and executive vehicles can be advertised with MSRP.

Advertising used vehicle prices compared to previous selling price

Used vehicles sales prices can also be compared to a previous price at which the vehicle was offered for sale. This is sometimes referred to as "WAS/IS" pricing.

WAS/IS pricing is allowed only when the vehicle was actually offered for sale at the comparative price for at least 4 weeks during the preceding 90 days; or if the 4 week period was prior to the 90 days, the advertisement must disclose the date, time, or season when it was offered at that price. The comparative price may not exceed the seller's cost plus regular percentage markup used in an actual, or similar, sale during recent business transactions.

Dealers should be prepared to provide documentation to show compliance with this rule.

Advertising current selling price only

Dealers who list only the current selling price of a used vehicle in an advertisement are not subject to the above requirements. For this reason, we **recommend** dealers only list the current sales price of used vehicles in advertising.

Do I need to change my Buyers Guide?

***Clarification 03-25-2022:** This article originally stated that the buyer's guide did not need to be updated when the selling price changed, provided that no comparison was made between the buyer's guide price and the selling price. The was meant to provide guidance to dealers when the selling price is **less** than the buyer's guide price. In the current used vehicle market, it is possible that a used vehicle may be marked up above the originally listed buyer's guide price. The department is revising their guidance as follows:*

If the advertised selling price of the vehicle is **less** than the buyer's guide price, the buyer's guide should not be changed or altered. If the advertised selling price is **greater** than the buyer's guide price, and new buyer's guide must be completed to reflect the higher price. **The buyer's guide price represents the maximum amount at which the vehicle can be sold.**

At any time the advertised selling price is compared to the buyer's guide price, you must adhere to the requirements of ATCP 124 and/or Trans 139.

~~The Buyer's Guide price should not be altered even if you offer the vehicle for another price later. Simply advertising the vehicle at a sales price different than listed on the Buyer's Guide is not a violation of the above rules. However, if you invite direct comparisons between the sales price and the price on the Buyer's Guide, then it would need to comply with the requirements of ATCP 124 and/or Trans 139.~~

The Department of Agriculture Trade and Consumer Protection (DATCP) website has more information regarding the [price comparison advertising rule](#). For

questions, call DATCP at (800) 422-7128 or email DATCPHotline@wisconsin.gov.

Additional motor vehicle [advertising guidance](#) is provided on the Wisconsin DOT webpage. If you have any further questions or concerns, please contact Tristan.Kloss@dot.wi.gov.

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New versus used - why is it so confusing?

Ask someone to explain the difference between a new vehicle and a used vehicle and they might cringe. Why? In short, Wisconsin law has two definitions for a “new” vehicle. To help you understand, the first thing you must know is that both definitions of “new” only apply to licensed franchise dealers.

Wis. Admin. Code ch. Trans 137.03(7) clarifies the definition of a new vehicle as it relates to a dealer’s need for a franchise agreement in order to sell a vehicle from a manufacturer’s new vehicle line. It reads, “New motor vehicle” for purposes of this chapter and enforcement of s. 218.0116 (1) (n), Stats., means any motor vehicle other than a used motor vehicle as defined in sub. [\(9\)](#). Sub 9 reads, “Used motor vehicle” means:

- (a) Any motor vehicle which *has been* privately titled, **or**
- (b) Any motor vehicle which *has not been* privately titled, **but:**
 - 1. Has been operated more than 6,000 miles, **or**
 - 2. Has been operated more than 4,000 cumulative miles, **and** owned more than 120 days by the licensee currently offering the vehicle for sale, **or**
 - 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**
 - 4. Is of a previous model year. A vehicle shall be considered to be a previous model year after December 31 of the calendar year identical to the manufacturer’s designated model year.

If the vehicle you want to sell is not “used” as described above in sub. (9), then you must have a franchise agreement with the manufacturer of that make in order to sell it.

If you have determined that you need a franchise agreement to sell a specific manufacturer's new vehicle line, and you have obtained the franchise agreement, your next step is to determine if vehicle is new or used for the purposes of selling and advertising. Those definitions are found in Wis. Admin. Code ch. Trans 139.02(11) and (20).

*Wis. Admin. Code ch. Trans 139.02(11) – “New” means any untitled or non-privately titled motor vehicle of the stated model year which has not been a demonstrator **and** has not been operated more than 200 miles for purposes other than manufacturer tests, pre-delivery tests by a dealer, dealer exchange or delivery.”*

If the vehicle meets this definition of new, you may sell and advertise it as a new vehicle, using a Monroney Label.

Wis. Admin. Code ch. Trans 139.02(20) - “Used” means any motor vehicle other than a new motor vehicle and includes executive or demonstrator.”

If the vehicle meets this definition of used, you must sell and advertise it as a used vehicle and complete a Wisconsin Buyer's Guide.

Wis. Admin. Code ch. Trans 139.03(12) specifically states that, “Franchised new vehicle dealers, distributors and manufacturers are the only licensees permitted to advertise or sell new vehicles. Since Trans 139 gives its own definition of a “new” vehicle, it means that the Trans 139.03(11) definition of “new” can only apply to franchise licensed dealers. A non-franchised dealer can never advertise or sell a vehicle as “new”.

To provide a couple of real-life examples:

- If you are a franchise licensed dealer as determined by Wis. Admin. Code ch. Trans 137.03(7) and you have a vehicle on your lot that has been test driven by consumers for 260 miles, you have to disclose that vehicle as used and complete a Wisconsin Buyer's Guide because it does not meet the definition of a new vehicle in Wis. Admin. Code ch. Trans 139.02(11) for the purposes of selling and advertising.
- If you are a non-franchised dealer as determined by Wis. Admin. Code ch. Trans 137.03(7) and you have a vehicle on your lot that is 3 years old with 1 mile on it, you must sell and advertise it as used, and complete a Wisconsin buyer's guide, because Wis. Admin. Code ch. Trans 139.03(12) states that only franchised new vehicle dealers are permitted to advertise or sell new vehicles.

Additional information can be obtained by contacting your Field Investigator and in WATDA Bulletin #6 5/3/19.

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Imported vehicle, eh? How to disclose Canadian vehicles on the Buyers Guide



There have been multiple questions regarding how to properly disclose a vehicle titled in Canada. A vehicle imported from Canada will require the following disclosures to be offered for sale. Assume the incoming odometer disclosure on the Canadian provincial or territorial registration is in kilometers and the odometer reads kilometers.

The following steps must be followed

- Disclose the reading on the odometer statement as “actual.” WisDOT will record the reading as actual. For example, a vehicle with 70,000 kilometers will be recorded on the Wisconsin title as “70,000 actual” without mentioning miles or kilometers.
- Disclose that the vehicle was titled in Canada on the Wisconsin Buyers Guide or Wholesale Buyers Guide.

- If the odometer reads kilometers, disclose the odometer on the Wisconsin Buyers Guide as “not legal” since the odometer does not register miles. Also, make the following disclosure in writing on the purchase contract: “WARNING! This vehicle cannot be legally operated on Wisconsin highways and may not be safe.”
- You can disclose the odometer reading as “actual” and the odometer as “legal” on the Wisconsin Buyers Guide if you replace the odometer with one that registers miles. Follow the guidelines on odometer replacement in the Wis. Admin. Code ch. [Trans 154.09\(2\)](#). The department will only title the vehicle as “actual” under this circumstance if you provide a signed statement from the repair shop along with the other required title documents. The signed statement must verify that the repair shop recalibrated the kilometers to miles and show the current mileage reading.

If the incoming odometer disclosure on the Canadian provincial or territory registration document is in miles and the odometer registers miles, you may disclose the odometer reading as you would on any other vehicle, even if the disclosure language doesn’t conform to Truth in Mileage Act requirements.

For details on how to handle other situations, such as a blank incoming odometer disclosure or odometer disclosure made on an unacceptable document (an auction block ticket, for example), contact the Dealer Licensing Unit for assistance.

A final caution: The department doesn’t recognize Canadian registration documents as privately titled documents. Therefore, if you obtain new vehicles from Canada you must be franchised to sell that make, or the vehicle must qualify as used under [Trans 137.03\(9\)](#) in order to be sold.

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Using dealer plates and disclosing courtesy/rental vehicles



Courtesy/Rental Vehicles – “Courtesy” and “loaner” are used interchangeably when referring to a vehicle that is temporarily given to a consumer to drive while their vehicle is being repaired or maintained by a Dealership. A vehicle designated as a “loaner” or “courtesy” vehicle by a dealership may or may not be titled to the dealership. The vehicle can use dealer plates if it’s offered for sale with a WI

Buyer’s Guide or Monroney Label. The customer is not required to sign any type of

contract or pay any fee to use the vehicle. Vehicles marked “loaner” or “courtesy” painted on the vehicle and not being offered for sale and cannot use dealer plates.

Rental vehicles – A rental vehicle is often “rented” by an individual or business to use for a short period of time, for a fee. Consumers are required to sign some type of contract, generally called a “rental” or “use” contract with the business. Any vehicle that fits any definition of “rental” must be titled and registered to the dealership or business. Rental vehicles are not eligible to use dealer plates.

A vehicle that has been designated as a loaner or rental vehicle must be disclosed on the WI Buyer’s Guide as previous business or rental use. If a vehicle was taken on an extended test drive, the vehicle does not need to be disclosed as personal or business use. If you’re unsure how to properly disclose a vehicle’s use, please reach out to your field investigator for assistance.

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Vehicle emissions testing in winter



Cold weather can affect evaporative systems, which may prevent a vehicle from passing the emissions inspection. Outside air temperature affects fuel volatility and the amount of vapor formed in the tank causing monitor readiness issues.

It is important that monitors "run" and are "ready" to test. With ready monitors the

emissions test will yield a final result of Pass or Fail. If too many monitors are in a "not ready" state, the test result will be a Reject. In effect, a test with no result, and no path to renew the registration.

If readiness issues persist and the vehicle is kept in a county that requires emissions testing, the motorist can get help by calling the Wisconsin Vehicle Inspection Program (WIVIP) hotline at 1- 866-OBD-TEST (1-866-623-8378).

For more information regarding emissions systems in winter, please read [“Don’t be left out in the cold! Temps impact emissions tests”](#) published in the January 2017 Plain Dealing.

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Quarterly Report

The following numbers have been generated from the Dealer and Agent Section (DAS) Quarterly Report. This data is from the **second quarter** (October through December 2020).

Field Investigation Unit (FIU)

The following statistics represent the Field Investigation Unit's compliance efforts, community outreach and enforcement actions.

Activity	Second Quarter
Complaints closed	567
Dealer inspections	292
Educational presentations	0

APU/DLU

The Agent Partnership Unit (APU) answers phone calls from dealers, government agencies, financial institutions, gas stations, grocery stores and various other types of agents throughout the state. These agents electronically process either title and registration, or renewal registration applications on behalf of the DMV.

The Dealer Licensing Unit (DLU) issues and renews multiple business license types. Individual licenses are issued to individuals who are selling or purchasing vehicles on behalf of dealerships. DLU answers dealer licensing questions as well as provides information about consumer harm and how to file a dealer complaint to the general public.

Activity	Second Quarter
APU phone calls	14,899

DLU phone calls	4,525
Business licenses issued	644
Individual licenses issued	4,458

Lemon Law

DMV receives telephone and email inquiries from consumers, dealers, lawyers, manufacturers, and law makers. The inquiries range from questions about the specifics of the Lemon Law, to assisting all facets of pursuing a claim.

Activity	Second Quarter
Lemon Law inquiries	51

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[View a list of recent FIU enforcement actions](#)

Published by the
Wisconsin Department of Transportation,
Division of Motor Vehicles, Bureau of Vehicle Services, Dealer and Agent Section.

Kristina Boardman, Administrator
Patrick Fernan, Deputy Administrator
Ann Perry, Bureau Director (BVS)
Michael Domke, Section Chief (DAS)
Scott Selbach, Vehicle Emissions Program, Supervisor
Mirenda McArdle, Field Investigation Unit, Supervisor
Shin Lin Tung, Business and Consumer Services Unit, Supervisor
Tristan Kloss, Plain Dealing editor

Wisconsin Department of Transportation
 Dealer & Agent Section
 PO Box 7909
 Madison WI 53707
dealers.dmv@dot.wi.gov
 Phone: (608) 266-1425