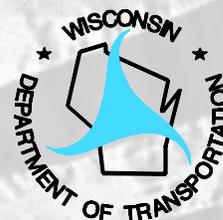




**“Nothing astonishes men so much as common sense and plain dealing.”**

R.W. Emerson



## Hearing scheduled for rule revisions

A public hearing will be held on proposed changes to chapters Trans 137, 138 and 139 of the Wisconsin Administrative Code relating to the motor vehicle dealer franchise law, dealer record keeping and dealer trade practices. The hearing is Tuesday, May 13, at 10:00 a.m. in Rm 254 of Hill Farms State Office Building, 4802 Sheboygan Ave, Madison.

Currently, Trans 137 treats vehicles with 4,000 or fewer miles that have been damaged as new vehicles, meaning only a franchised dealer could sell them. This would change the definition of “used motor vehicle” to include rental or leased vehicles with 4,000 or fewer miles that have been damaged, allowing a non-franchised dealer to sell them. This means that lessors or rental company owners don't have the inconvenience and expense of shipping them out of state to be sold and that the transaction can be conducted in Wisconsin.

Trans 138 changes would codify current WisDOT policy which allows manufacturers to hold the title of a manufacturer buyback (lemon) vehicle while the dealer has an exact copy of the title. Trans 138 changes would also allow multi-location dealership records to be kept at a single location with proper availability for inspection.

Trans 139 changes would allow the use of motor vehicle pricing guides such as Kelley Blue Book as price comparison in advertising used vehicle prices. Also, in Trans 139, a clear definition of “bird-dogging” or referral selling would be established, and it would prohibit this practice. Trans 139 changes would also allow dealers to request DOT approval of language on the Buyers Guide and Purchase Contract to accommodate new types of warranties.

While common understanding of the term “title” has long prevailed, changes in chapters Trans 137,138,139 explicitly define a “title.”

The Wisconsin Department of Transportation (WisDOT) is currently soliciting comments on these rules at: <http://www.dot.wisconsin.gov/library/research/law/rulenotices.htm>

You may also view or download copies of the proposed rules at this site.

## Congratulations!



**83%** of dealer transactions were completed electronically during the 1st quarter of 2008. This means 149,004 transactions were completed through dealers and agents during this time. By comparison, we started at 54.5% of dealer transactions being processed electronically during the first quarter of 2006. The increase is dramatic! WisDOT thanks you for your time and effort to make electronic processing successful. Did you know we now have over **2,900** dealers and agents participating in this program?

### Inside this issue:

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*We welcome your questions and comments.*

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email: [dealers.dmv@dot.state.wi.us](mailto:dealers.dmv@dot.state.wi.us)

## Dealer and Agent Section managers promote open door policy

Steve Krieser, Supervisor of the Field Service Unit and Nancy Passehl, Supervisor of the Agent Partnership and Customer Service Units both strongly believe in an open door policy for their customers.



What does that mean to you? It means that Dealer and Agent Section (DAS) managers value their partnerships. WisDOT customers have an open invitation to call Nancy at 608-264-9538 or Steve at 608-267-2033 concerning our DOT programs or if you have an issue that you feel really needs a Dealer and Agent Section manager's ear. If you are unable to reach either Nancy or Steve, please leave them a message and they will return your call as soon as possible. For emission questions, call Chuck Rhodes at 414-266-1084.

## Be careful with DMV data

Now that you are processing online you have access to a lot more records from DMV that you didn't have in the past. We want to remind you: "Don't misuse the data." In the late 1990's Congress passed the Driver's Privacy Protection Act (DPPA). It protects the personal information of private citizens from being released. Violations are severe, including the right to sue for actual damages and a \$2,500 fine per record. Can you imagine, releasing 500 records would equate to \$1,250,000!

You are permitted to access personal information to process titles electronically. You can check records for business purposes such as verifying ownership, liens, trade-ins and many other uses. Where it gets tricky is if you release the information, share it with others or use it for the wrong purpose. There have been instances of dealers and agents or their staff using DMV data to date a customer, using it against a spouse in a marital dispute or simply using it for marketing purposes like sending direct mail pieces or following up on license plates on cars driving through the lot. Be careful! These examples are all wrong and can get you in trouble.

*Where it gets tricky is if you release the information, share it with others or use it for the wrong purpose.*

In some ways the spirit of DPPA conflicts with other long-standing consumer information laws. The WisDOT Office of General Counsel has advised that anything a dealer gets from a customer can be shared without violating DPPA. It's up to the dealer. DMV dealers and agents need to be very careful when accessing DMV data as it relates to DPPA. That includes information from the DMV database via CVR, triVIN, or e-MV11.

Here are some examples of law that seem to contradict DPPA:

- ◆ Providing the name and address of prior owner upon request ; ss218.0146(2)WisStats., and Trans 139.06(6)(a) (2)., Wis Adm. Code. Even the Wisconsin Buyers Guide (window sticker) includes a recommendation to consumers to seek this information from the dealer.
- ◆ Showing the odometer statements and previous title to the customer; Trans 139.07(7), Wis. Adm. Code.
- ◆ Having the title available for inspection by potential buyers of consigned vehicles; Trans 138.04 (1)(b)(1)(g)., Wis. Adm. Code.

WisDOT lawyers have said dealers are in the clear on these required consumer disclosures because the information shared was obtained from the prior owner, not the DMV. As you can see, some laws conflict, at least in spirit. There are many examples where privacy must be balanced with the greater good. The best rule of thumb is to be careful with the data you get from DMV. Don't unnecessarily release or misuse someone's personal information. It could get you in a lot of trouble.



# Dealer Ed\_101

mopeds  
e-mv agent  
LISTSERV  
e-processing

## Electronic processing update

### Using an identifier will avoid customer errors

Recently the Agent Partnership Unit (APU) has seen an increase in errors where titles are being issued in the incorrect name. To avoid these errors you must follow these steps when processing titles electronically:

- Start with an identifier (the customer's Social Security Number (SSN), the Wisconsin Driver's License Number (Wi DL.) or the Federal Employer's Identification Number (FEIN).**
- Do not key the customer's name.**
- Allow the system to check the DMV database.**
- Select the correct name as it populates in the field.**

Selecting the wrong customer can prevent plate renewal notices and other important DOT correspondence from reaching the correct parties, especially after address changes are made. If you need assistance please call APU at 608-266-3566.



**Moped season is upon us!** If you are currently licensed as a moped dealer, you can legally sell only mopeds. You cannot sell motorcycles. A moped has an engine size of 50cc or less. Once you start selling bikes with engines larger than 50cc, you will need to update your dealer license to a motorcycle dealer license. In addition, you will need a franchise appointment from the distributor in order to sell new motorcycles. Franchise appointments are not required for mopeds.

## Pass the word—LISTSERV

Please help us get the word out! Plain Dealing is now electronic. If you haven't already, it's time to sign up for Dealer and Agent Section's e-mail distribution list (Dealer LISTSERV) and keep your dealership up-to-date regarding *Plain Dealing* newsletters, law changes and other important dealer license information. Register with the DOT e-mail LISTSERV at:

<http://www.dot.wisconsin.gov/business/dealers/listserv.htm>

Dealers who are already signed up through the LISTSERV do not need to sign up again. If your dealership wants individuals to receive e-mail notifications, each user must sign up using its unique e-mail address. If you do not have a computer or access to a computer, please contact James Chaja at 608-261-2552 for further information on obtaining this newsletter. Pass the word to your friends and partners. Thank you for your help!

## e-MV agent—Coming Soon

The Department of Transportation (WisDOT) is developing a new secure web application that will allow financial institutions to add and remove liens electronically. The record is updated immediately.

The following transactions will be available to those who wish to sign up for this pilot:

- ◆ Adding liens to vehicles already owned by the lienholders' customer and issue a new title to the customer.
- ◆ Adding liens to vehicles already owned by the lienholders' customer and release an existing lien.
- ◆ Process a repossession transaction if the repossession occurs in Wisconsin and the new title is being issued to the lender.
- ◆ Issue a replacement title to the owner if a lien is being added.
- ◆ Removing a lien from DOT records. No new title is issued.

Whenever a title is issued, it is mailed by DOT. More information will be available in upcoming issues.

## A note from the Department of Financial Institutions

### Guaranteed Asset Protection

As most motor vehicle dealerships are aware, the Department of Financial Institutions - Office of Consumer Affairs approved the sale of Guaranteed Asset Protection ("GAP") products in connection with credit sales. Information regarding this approval ("2004 GAP approval") can be found on the Department of Financial Institutions' website at: <http://www.wdfi.org/fi/lfs/sf/default.htm>. A dealership that is not familiar with the 2004 GAP approval should visit the website and carefully review each of the conditions under which the approval was given.

When reviewing the 2004 GAP approval, special attention should be given to the 4<sup>th</sup> and 5<sup>th</sup> condition. Upon termination of the GAP agreement, a refund of the unearned GAP premium must be allowed. If termination occurs within 30 days of the GAP purchase, the customer is entitled to a full refund of the GAP premium. If the termination occurs more than 30 days after the product is purchased, the customer is entitled to a refund that is calculated by a method that is no less favorable to the customer than the rule of 78's. In cases where the GAP terminates because the related credit transaction is paid in full, or the vehicle is repossessed or surrendered by the customer, the customer is not required to sign a form requesting the cancellation of the product.

It has come to the attention of the Department of Financial Institutions – Division of Banking ("division") that some dealerships are not allowing a refund of the unearned GAP premium when the GAP agreement terminates. Dealerships that are not allowing refunds must take action to rectify this situation. All transactions with GAP should be reviewed, and for any transaction where the GAP agreement was terminated on or after November 1, 2004, a refund of the unearned GAP premium must be allowed at this time.

All dealerships should maintain a log that identifies accounts where GAP has been written. The log should be in a format similar to the log that is currently being maintained for accounts with credit insurance. It is recommended that one log be maintained for both credit insurance and GAP. This can be accomplished by adding the GAP information (columns) to your existing credit insurance log. As an alternative, a separate log could be maintained for the GAP agreements. Sample log forms can be found at the website referenced above.

Any dealership that begins using a GAP log as a result of reading this article should also create a separate log for GAP agreements that were not previously recorded. This log should be kept in payoff date order. When an account with GAP prepays, all the appropriate columns of the log should be completed. When all accounts with GAP agreements originated prior to the date of this article have been paid in full, the dealership will be able to discontinue use of this additional log.

Dealerships should also be aware that although the lender (sales finance company, bank or credit union) that purchased the installment sales contract from the dealership is responsible for notifying the dealership when an account prepays, the seller (dealership) of the GAP and credit insurance products is responsible for making the appropriate refund. This includes taking proactive steps to ensure your dealership is being advised of all prepaid accounts.

When contacting various lenders to advise them of the most effective method of notifying a dealership of prepaid accounts, the division advises lenders to provide dealerships with monthly reports that identify all the accounts that prepaid in a particular month. Although some lenders may continue to only provide dealerships with individual notices when a specific account prepays, in most cases, lenders have complied with the division's request of sending monthly reports.

A dealership should be familiar with the notification policy of each lender. Because dealerships have different types of financing programs with the lenders that conduct business with them, the dealership should not presume that a monthly reserve statement will identify all the accounts that have prepaid for a particular month. If it is the policy of a lender to provide monthly reports separate from the reserve statements, and your dealership has not received a report for a particular month the dealership should have a procedure in place so that a representative of the dealership contacts the lender to question why the report was not received. Please be reminded that all prepaid notifications must be retained at the dealership for the division's review. Please take steps to ensure that this article is shared with the representatives of the dealership's finance and insurance department to ensure that the concerns noted above are addressed accordingly.

## Disclose product warranties carefully

Over the years, dealerships have sold certain engine additives reputed to improve vehicle performance or durability and have marketed those additives as warranties on a vehicle. These engine additives carry a “product warranty” but are not “vehicle warranties” or “service agreements”. Avoid warranty misrepresentation complaints by clearly disclosing these product warranties on the purchase contract so the purchaser understands they have not purchased a vehicle warranty or service agreement.

Disclose engine-additive product warranties in the following manner:

1. On the Motor Vehicle Purchase Contract, in the warranty section, check the appropriate box regarding any existing manufacturer warranty on the vehicle. Do not disclose the vehicle additive product warranty as a manufacturer warranty.
2. Under “Dealer Warranty Information”, check “As Is” leave box 7 and 8 “Service Contract Information”: blank, unless the dealership is offering some kind of warranty or service agreement (other than the engine additive product warranty). Do not disclose the engine-additive product warranty as a dealer warranty.
3. On the purchase contract, under “Other Conditions of Sale,” write in “*Purchase of {INSERT BRAND NAME} product warranty, not a warranty or service contract on this vehicle.*”
4. In the price calculation, use line “1d”: “Other”: to show the product warranty name and price.
5. Also, keep in mind that most vehicle warranties or service agreements administered by a third party are a form of insurance (Chapter Ins 5.01, Wis. Adm. Code). Therefore, the administrator of most vehicle warranties or service agreements must be registered with the Office of the Commissioner of Insurance. (OCI)
6. The exception to this rule is for plans offered in conjunction with the installation of an additive into the engine oil or coolant in cases where the warranty offeror is also the manufacturer of the additive product. In those cases, the product does not have to be registered with OCI. However, you must still disclose the product warranty as described above. Additionally, you must represent these products primarily on the basis of their purported improvement of engine performance and longevity. It is a deceptive and prohibited practice for a dealer to advertise the product as a vehicle warranty product.



## Long time investigators retire

Investigators Steve Reid and Mike Falk said good-bye after serving a combined 61 years in Fond du Lac, Columbia, Dane, Juneau and Richland counties. Congratulations and thank yous were extended to Steve and Mike at informal gatherings. Their dedication and loyalty to WisDOT will be missed. Both are leaving WisDOT with a lot of memories. Mike enjoyed a 34 year tenure and Steve 27 years.

Steve’s territory has been redistributed to Dreher Dysert who is relocated at the Fond du lac DMV Service Center. Dreher can be reached at 920-929-3716.

Mike’s territory has been divided and is listed below:

- ◆ Jim Harden—608-267-6973 Dane and Richland counties
- ◆ Kim McCluskey—608-267-7807 Columbia county
- ◆ Shannon Nicolai— 715-831-7477 Juneau county
- ◆ Dreher Dysert— 920-929-3716 Adams county



**Happy Retirement**

## DOT Enforcement Actions

Akosa, Melvin – Madison: Issued a Special Order and seven-day suspension of his salesperson's license for acting as a motor vehicle dealer without a license.

Bartus, Sam – Wausau: Salesperson's application denied due to a history of violations that resulted in the revocation of Bartus' dealership license and subsequent violations related to the proper titling of a motor vehicle.

Parpart, Michael – McFarland: Issued a Special Order and seven-day suspension for making a false odometer disclosure and submitting a false statement to the Department.

PPNA Auto Sales – Milwaukee: Issued a Special Order and 60-day suspension for various violations including: failing to submit applications for title to the Department within seven business days; failing to license salespeople; submitting fraudulent applications for title to the Department via e-MV11, harming the integrity of DMV records in the process, and failing to have customers sign Wisconsin Buyers Guides. These offenses also violated the terms of an existing special order against PPNA.

## DOT Criminal Actions

Garzona, Delfido – Chicago, IL (former buyer for Alexis Auto Sales, Dyer, IN): Charged in Racine county with title alteration and odometer misrepresentation. Pled no contest to an amended charge of theft of property valued under \$2500 and was sentenced to a fine of \$1000 plus \$598 in court costs. The second charge was dismissed.

Middleton, Kurt – Madison: Charged in Dane county with three counts of submitting false title applications to the State and to one count of bail jumping. Pled guilty to all four charges and was sentenced to one year of imprisonment followed by one year supervised release for each count (serve concurrently).

Sims, Samuel – Milwaukee: Charged in Milwaukee county with three counts of receiving stolen property valued over \$10,000; two counts of removing vehicle identification numbers; and one count of forgery. Pled guilty to three counts of receiving stolen property and was sentenced to ten years imprisonment for each count (serve concurrently), followed by 5 years probation. All other charges were dismissed.

## DOT Citations

Acapulco Used Cars – Curtiss: Pled guilty to one citation for failing to submit an application for title to the Department within seven business days. Assessed a \$186 forfeiture.

G&B Auto Sales – West Allis: Pled no contest to three citations for failing to submit an application for title to the Department within seven business days. Assessed \$568.50 in forfeitures.

Gilbertson, Terry – Holmen: Pled guilty to one citation for acting as a motor vehicle dealer without a license. Assessed a \$753 forfeiture.

Hamre, Richard – Madison: Pled no contest to four citations for acting as a motor vehicle dealer without a license. Assessed \$3012 in forfeitures.

Holderman, William – Madison: Pled guilty to four citations for acting as a motor vehicle dealer without a license. Assessed \$2191 in forfeitures.

Karls, Jeffrey – Madison: Pled no contest to four citations for acting as a motor vehicle dealer without a license. Assessed \$3012 in forfeitures.

PPNA Auto Sales – Milwaukee: \$4000 civil forfeiture assessed against the dealer for submitting fraudulent applications to the State that underreported the sales price of motor vehicles.

Rick's Auto Repair & Towing – Madison: Pled no contest to one citation for failing to apply for title. Assessed a \$160.80 forfeiture.

Right Way Motors – Sussex: Default judgment of guilty by no contest entered for twenty-nine citations for failing to submit an application for title to the Department within seven business days. Assessed \$5394 in forfeitures.

Rusitovski, Spendi – Oak Creek: Pled no contest to one citation for acting as a motor vehicle dealer without a license. Assessed a \$768 forfeiture.

Shaw, Michael – Milwaukee: Pled guilty to one citation for acting as a motor vehicle dealer without a license. Assessed a \$753 forfeiture.

Swalve, Brett – Cudahy (former owner of Brielyn Auto Body, Milwaukee): Default judgment of guilty by no contest entered for one citation for failing to submit an application for title to the Department within seven business days and one citation for failing to return dealer materials upon dealer cessation. Assessed \$442 in forfeitures.

Tipler, David – Neenah: Pled no contest to five citations for acting as a motor vehicle dealer without a license. Assessed \$3930 in forfeitures.

Wheeler, Christopher – Fremont: Pled guilty to one citation for acting as a motor vehicle dealer without a license. Assessed a \$753 forfeiture.

Zaffino, Fausto – Milwaukee: Pled no contest to one citation for acting as a motor vehicle dealer without a license. Assessed a \$768 forfeiture.