

Plain Dealing

A policy and administrative bulletin for licensed dealers from the Dealer Section of the WisDOT Division of Motor Vehicles.

Vol. 1, No. 1

Fall 1989

"Nothing astonishes men so much as common sense and plain dealing."

R. W. Emerson

Welcome to the first issue of "Plain Dealing." We plan to use this newsletter to inform you of new laws, as well as changes and proposed changes to existing laws and rules. We will also explain policies, provide information on our services, and introduce you to our staff. This issue contains a special pull-out page which explains the form and procedure changes resulting from the federal Truth in Mileage Act.

Your comments and questions are invited; future articles will cover topics of interest and importance to you. We hope "Plain Dealing" will provide a forum for discussion between dealers and state officials and serve as an educational tool to keep you informed of current issues.

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Plain Dealing is published quarterly by the Wisconsin Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Registration and Licensing.

Norbert Anderson, administrator
Maureen Hlavacek, director

Address correspondence to Vikki VanDeventer, editor, Plain Dealing, DOT Dealer Section, P.O. Box 7909, Madison, WI 53707-7909 or FAX to (608)267-0323.

New Dealer Section Chief

Charles M. Supple was named chief of the Dealer Section effective April 24, following a lengthy selection process. Many of you may already know Chuck from his service in the Department of transportation. Most recently, Chuck supervised the Dealer Section's Field Investigation Unit, a position he was appointed to in 1985. He began his career with the department in 1980 as a consumer specialist and became a policy analyst in 1984. Chuck was also one of the first consumer representatives on AUTOCAP of Wisconsin, serving a two-year term from 1984 to 1985.

A native of Chicago, Chuck received his degree in business administration from Western Illinois University in 1977. He represented the firm of Smith Barney, Harris Upham & Company on the Chicago Board Options exchange before joining the Department of Transportation.

When asked in a recent interview what he saw as some of the key issues facing Wisconsin dealers, Chuck spoke of increased competition in the motor vehicle industry. This competition comes not only from other licensed dealers but also from new ways of selling vehicles such as brokers, auto clubs, auctions and fleet companies who sell "almost new" used cars. Dealers also face competition from unlicensed dealers who don't abide by the same rules they do.

In response to a question about the Dealer Section's role in these issues, Chuck noted that part of our role is to work with business and cooperate in adapting to change rather than being on opposite sides of the fence. In this capacity we need to assume a helping role, providing information and facilitating self-regulation like AUTOCAP and the recent Automobile Dealers Association of Mega Milwaukee's advertising regulation program.

When asked about the future of the section, Chuck replied that emphasis will be placed on planning, prioritizing, customer service and quality improvement. We will need to continually examine our programs. Chuck believes new ways of doing business could dramatically increase our efficiency.

"These are new and exciting times and I couldn't be more thrilled to be the chief of this section." Chuck Supple

Hearings! Hearings!

Virtually all dealers will be affected by the Department of Transportation's proposed changes in Chapter Trans 138 of the Wisconsin Administrative Code, which now describes requirements for dealer licenses and restrictions on off-premise sales. The changes would add a new section to define motor vehicle, wholesale and motor vehicle auction dealers; and would modify the regulations on temporary or off-premise sales.

Defining Dealers

Trans 138 now lists the requirements for various dealer licenses, but the chapter doesn't say who needs to be licensed. We are proposing to formalize our policies on licensing motor vehicle dealers, wholesalers and retail auctioneers.

The definition of a motor vehicle dealer covers a wide variety of activities including selling and offering to sell motor vehicles, negotiating motor vehicle sales, and leasing vehicles with an option to buy. We continue our policy of considering motor vehicle "brokers" as dealers. Credit unions, membership associations or businesses which negotiate special prices for their members would, for example, be required to have a dealer's license. Individuals who sell their private vehicles, fleet owners selling cars or trucks they no longer need, and retail auctioneers who sell vehicles in estate and fleet sales are examples of situations where a dealer's license is not required.

Our proposed rule adds to the conditions an auctioneer or fleet owner must satisfy in order to sell vehicles without a dealer's license. Vehicles must still be sold in "single owner" sales where vehicles owned by each person or business are sold separately. In addition, each vehicle offered for sale must have been privately titled and used by its owner for his or her transportation needs. The vehicles must be sold "as is," without a warranty from the owner or seller. Any advertisements for the sale must identify the owner of the vehicles. Each vehicle offered for sale must display a "Wisconsin Buyer's Guide," which warns consumers about the lack of a warranty and common problems found in used vehicles.

Off-Premise Sales

The Wisconsin Automobile and Truck Dealers Association petitioned the department to write a rule revising the regulations on temporary or off-premise sales by licensed dealers. The association asked us to reduce the number of temporary sales allowed each year and to prohibit dealers from holding such sales outside of "the community for which the dealers are licensed." Our planned revision of s. Trans 138.08 closely follows a proposal suggested by the association. The number of off-premise sales allowed each year would be reduced from six to three. Restrictions would be placed on the number of vehicles sold at each temporary location. The proposal also prohibits temporary sales on days when the dealership's permanent location is not lawfully open for business (typically Sunday). The off-premise changes would not apply to recreational vehicle dealers.

Hearings

Hearings on these proposals are scheduled in Madison for Monday, October 2, 1989, beginning at 8:30 a.m. in the Lakeshore Room of the Wisconsin Center. Your comments are invited and questions will be answered at the hearings. The Wisconsin Center is located on the campus of the University of Wisconsin, at 702 Langdon Street, next to the Memorial Union and across the street from the main library. Parking is limited in the campus area. A public ramp is located on Lake Street between State Street and University Avenue (a two-block walk from the Wisconsin Center).

If you would like copies of the proposed changes to Trans 138 or need further information on parking or alternate methods of transportation to the hearings, please call or write the Wisconsin Department of Transportation, Dealer Section-Business Licensing Unit, P. O. Box 7909, Madison, Wisconsin 53707-7909, telephone (608) 266-1425. Written comments or questions may be addressed to Thomas Gais at the address above.

Public Hearing on Trans 138
Monday, October 2, 1989

New Odometer Regulations

The Truth in Mileage Act of 1986 took effect on **April 29, 1989**. This federal law established new wording for odometer disclosure statements and required states to include an odometer disclosure statement as part of the title. The law also defined record-keeping requirements for dealers, leasing companies and auctions. Motor vehicle dealers were required to comply with provisions of the act beginning April 29, 1989. Violations of this act are considered felonies.

What is Required

All titles, and separate title assignments must use a secure printing process or other secure process. The department is in the process of revising its title certificates to conform with the new requirements and has created new reassignment forms and power attorney forms. Our deadline for full implementation is October 29, 1990.

Odometer mileage disclosure statements must be made on the title itself if the title contains an odometer disclosure in the assignment and reassignment areas.

In addition, if the title does not meet the new federal requirements, a separate odometer mileage disclosure statement which does contain the required wording must be completed and attached to the title.

The original mileage disclosure statement must remain with the title from transfer to transfer.

Before a vehicle may be leased, the lessor must notify the lessee that he or she will be required to provide an odometer disclosure statement at the end of the lease period. The lessor must keep a copy of the odometer statement for 5 years.

The odometer reading of the last mileage disclosure will be printed on the face of the new title.

You can't sign as both transferee and transferor in the same mileage disclosure statement. In cases where a lienholder has the vehicle title, a secure "power of attorney" must be used to transfer ownership.

The proper wording for the odometer mileage disclosure statement must include:

Information on the seller: printed name, current address and signature. If the seller is a business, the printed name of the person signing the disclosure for the business must be included as well as the printed name of the business.

Information on the buyer: printed name, current address and signature. If the buyer is a business, the printed name of the person signing for the business must also be included.

The odometer reading of the vehicle at the time of sale and a statement that the odometer reading cannot include tenths of a mile.

A statement that the seller certifies the odometer reading is 1) the actual mileage, 2) not the actual mileage, or 3) in excess of the odometer's mechanical limits. The area of the disclosure which contains the not actual mileage statement must also include the phrase "Warning—Odometer Discrepancy".

How to Comply

The key to complying with the requirements of the Truth in Mileage Act is to determine whether or not a title contains the required wording for the odometer disclosure outlined in the last section. When a title does not contain the proper wording, a separate odometer disclosure statement will also be required. Separate odometer disclosure forms which contain the required wording are now available from the Wisconsin Automobile and Truck Dealers Association and other form suppliers (we will not furnish these forms). *A completed copy of the form must be given to the buyer and one copy must be maintained in your records for five years. The original statement is to be attached to the title.*

Although the separate odometer disclosure forms are meant to be temporary, you can expect to see non-conforming titles with vehicles whose titles were issued before this act took effect for many years to come.

When a title does contain the required odometer disclosure wording, no separate odometer disclosure may be used. *A copy of the front and back of the assigned title must be given to the buyer, and a copy must be maintained in your records for five years.*

Your copy must include the acknowledgment of the odometer disclosure signed by the buyer.

Forms

You will notice some changes to forms used by the department, particularly the MV-1 Application for Title/Registration. There is no longer an odometer statement on this form. The odometer section has been replaced with inspection information about the vehicle identification number (VIN) which was formerly located on the back of page one. Odometer statements must now be made directly on the title or on a separate odometer disclosure form.

There is a new space called "Required Title Brand" in the dealer's statement section of the MV-1. A title brand is a statement made on a title and carried forward on all future titles. It usually is information a purchaser should be aware of, such as flood damage, rebuilt salvage or manufacturer buyback. All title brands will continue to be carried forward on titles received from other states. At this time you will be required to write in the "Required Title Brand" space if a vehicle was stolen and recovered, flood/water damaged, rental or bought back by the manufacturer. Other brands may be added in the future.

The reassignment form MV-2115, Supplement to Certificate of Title; and a new form MV-2690, Power of Attorney, will be printed on security paper and contain the new odometer disclosure wording. The reassignment form should be used for dealer-to-dealer sales when the reassignment area on the title or certificate of origin is full, or when the vehicle is sold through auction. The power of attorney form may only be used when a vehicle's title is physically held by the seller's lienholder, under the laws of another state. This should never occur with Wisconsin titles. A general power of attorney does not satisfy the federal requirements.

The new MV-1 forms are available now. The new reassignment forms and power of attorney forms have been ordered and will be available soon. Because of the additional costs associated with printing forms on security paper, there will be a charge for the reassignment and power of attorney forms. These forms may be ordered from the Wisconsin Department of Transportation, Document Sales, 3617 Pierstorff Street, P. O. Box 7713, Madison, Wisconsin 53707-7713. Questions about the Truth in Mileage Act may be directed to Tom Krummel (608) 267-2137 or Dawn Kalies (608) 267-0483.

Disclosure of Theft-Recovered Vehicles

In a case decided in April, a Milwaukee circuit court found that a dealer had misrepresented a car to consumers when he didn't tell them that the vehicle had been stolen and recovered. We agree with the ruling, since stolen vehicles are often damaged or abused before they are recovered and are riskier purchases for consumers. We have therefore adopted a policy requiring dealers to disclose to prospective buyers their knowledge of a vehicle having been stolen and recovered. If you are using vehicle disclosure labels which do not include a box for this prior history, you must write words such as "Theft Recovered" or "Stolen and Recovered" in any blank space in the section titled "Vehicle Use." All future used vehicle disclosure labels will provide a space for this disclosure.

Vehicle Service Programs

The Office of the Commissioner of Insurance has received a number of complaints regarding problems with vehicle service contracts. Some of the complaints involve warranty companies that are not authorized by the commissioner to sell vehicle service contracts in Wisconsin.

The Insurance Commissioner's Office requires certain warranty plans to obtain a limited certificate of authority before offering their programs for sale in Wisconsin. The service contracts must also be approved and the rates must be placed on file with the office.

Because of the number of warranty companies that have gone out of business in recent years, dealers should take steps to ensure that a warranty company is properly licensed before entering into an agreement to sell that company's vehicle service contracts. To verify a warranty company's license status, contact *Rhonda Shaw* at (608) 267-7186 or write to her at State of Wisconsin, Office of the Commissioner of Insurance, P. O. Box 7873, Madison, Wisconsin 53707-7873.

Emission Test Changes

On April 3, 1989, the Wisconsin Vehicle Inspection Program began inspecting emission equipment for all vehicles in conjunction with the annual emission test. The fuel filler restrictor, fuel cap, and catalytic convertor are now inspected to ensure that factory installed equipment has not been removed, disabled or altered. Dealers should be aware that any vehicle acquired after April 3, may have an emission equipment failure recorded against it making it impossible for the next owner to register without making required repairs. A vehicle may have an emission equipment failure recorded against it even though the emission system appears to be intact. To obtain a vehicle's emission test record write to: Wisconsin Department of Transportation, Vehicle Records Section, P. O. Box 7911, Madison, Wisconsin 53707-7911. Dealers who have established accounts with the department may phone requests to (608) 266-0666. There is a fee of \$2.00 per record and \$0.25 per photocopy for this service.

Automatic Seat Belt Workshops

The Wisconsin Department of Transportation in cooperation with the Wisconsin Automobile and Truck Dealers Association is sponsoring a series of free workshops about automatic seat belts. All new cars manufactured for sale in the United States after September 1, 1989, must have automatic front seat occupant protection; either automatic safety belts or supplemental air bags in addition to safety belts.

The workshops will help dealers become familiar with the new laws and equipment, and prepare them to answer customers' questions as well as understand their own liability responsibility.

The workshops are scheduled from 10:30 a.m. until 1:30 p.m. and include lunch. A September workshop will be held in Brookfield on the 18th at the Midway Motor Lodge. For more information and registration, contact Elaine Kizewski at the Wisconsin Occupant Protection Partnership (715) 341-7328, or write to her at 199 Carol's Court, Plover, Wisconsin 54467.

DMV Celebrates 50th Anniversary

The Division of Motor Vehicles hosted a festival on Saturday, July 15, in honor of its 50th anniversary. The public was invited to the festivities which included a vehicle display covering the years 1939 to 1989, driver's licenses, manuals, photographs, and a complete set of Wisconsin automobile license plates. Special demonstrations included driver license and registration reviews. There was also a truck, trailer and school bus display, plus the highway safety seat belt convincer, the Madison Med-Vac helicopter and a vintage 1939 State Patrol cruiser.

Dealers Monitor Advertising

Members of the Automobile Dealers Association of Mega Milwaukee (ADAMM) are working with the University of Wisconsin Milwaukee's Center for Consumer Affairs to police dealership advertising. Consumer center staff prepared an extensive manual of advertising standards and held workshops with ADAMM members to explain the details of the program.

Dealers will work with center staff to critique advertising and where necessary revise or eliminate print media ads. Ads which continue to violate standards following correction by this program may be referred to appropriate state agencies for investigation and/or enforcement. The program is currently being expanded to include radio and television ads as well.

Is Puffery Acceptable?

We have been asked recently about the use of such terms as "best" and "greatest" in advertising. These terms fall in the category of "puffery" and are usually acceptable. "Puffery" is defined by the Council of Better Business Bureaus as superlative statements based upon subjective claims. These statements may be expressions of opinion or personal evaluation which, in general, can neither be proved nor disproved.

For instance, advertising that the Ford Taurus is the "best" American car is acceptable because it is a statement of opinion. However, advertising the "best" price on the Taurus is something that is measurable and must be proven to be acceptable.

Some examples of "puffery" in dealer advertising include: "Finest Selection of Used Cars," "Dealingest Dealer in Town," and "High Trade-In Values." We have chosen not to pursue the above slogans due to their subjectiveness and their general acceptance by the public.

Salvage Rule Hearing

The Wisconsin Department of Transportation held a public hearing on June 28, to review an existing emergency rule and a proposed rule that would permanently modify provisions of the Wisconsin Administrative Code Chapter Trans 136 and create Chapter Trans 149. These rules cover record-keeping requirements for salvage dealers and inspection of repaired salvage vehicles.

Approximately 120 people attended the hearing, most of them currently licensed salvage dealers. Of the 20 people registered to speak at the hearing, all expressed concern that the record-keeping requirements of the rules as proposed would create an undue hardship for dealers.

Possible revisions under consideration include reducing the list of major parts, requiring parts records only on vehicles within a certain age limit, allowing major parts records to be kept by other means than the case bound book, and not requiring major parts records to be kept for inventory on hand before the rule goes into effect.

All comments, made at the hearing and entered into the public record before July 7, 1989, will be taken into consideration as the final draft of the rule is written. Everyone who submitted comments or attended the hearing will receive a copy of the final draft when it is completed. Additional copies will be available by writing the Wisconsin Department of Transportation, Office of General Counsel, Room 115-B, P. O. Box 7910, Madison, Wisconsin 53707-7910.

Nuts and Bolts

When filling out a purchase contract, the base price must be stated. The base price must be the same as the asking price indicated on the used vehicle disclosure label or the manufacturer's suggested retail price on the Monroney label.

We occasionally see a "DOC" fee referred to on purchase contracts. The Wisconsin Administrative Code Chapter Trans 139.05(8) prohibits dealers from charging purchasers additional service fees for completing any sales-related vehicle inspection or forms which are required by law or rule.

In selling a used mobile home, disclosure of the home's general condition must be made before execution of the purchase contract.

In January of this year we invited all motor vehicle manufacturers and distributors licensed in Wisconsin to set up informal dispute settlement procedures under the "Lemon Law" and apply for state certification for those procedures. To date, only Toyota has applied for certification, so consumers seeking relief under the "Lemon Law" may continue to go directly to court.

A list is now available of authorized inspection agencies for repaired salvage vehicles. For a copy of the list contact the Dealer Section at (608) 266-1425 or write to:

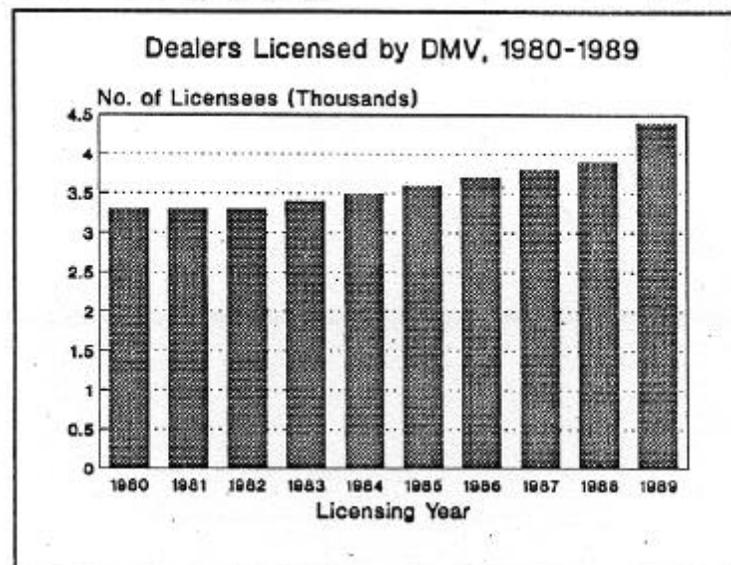
Wisconsin Department of Transportation, Dealer Section,
P. O. Box 7909, Madison, Wisconsin 53707-7909.

1989 Licensing Actions

Spickler's Leisure World, Chippewa Falls: - License was suspended for 7 days for numerous consumer law violations. These violations included keeping deposits in excess of allowed penalty amounts, failing to honor a consignment sale agreement and false or misleading advertising.

Molinaro Auto Sales, Racine - License was suspended for 12 days for failing to honor a motor vehicle service warranty.

Cross Salvage, Whitefish Bay - License was suspended for 6 months for receiving stolen property, failing to maintain proper records, and failing to return certificates of title or bills of sale to the Division of Motor Vehicles.



There's been a large increase in the number of dealers licensed by the Division of Motor Vehicles since last year, perhaps due to the new buyer identification card requirements. The numbers in the above graph include motor vehicle, mobile home, motorcycle, and salvage dealers. Wholesalers and wholesale auction dealers are not included.