

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

CR 06-135

The Wisconsin Department of Transportation adopts an order to amend TRANS 138.03(1)(a)(intro.) and (6); and create TRANS 138.08(5), relating to dealer facilities, records and licenses.

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: Ch. 218, Stats.

Statutory authority: ss. 85.16(1), 218.0152, 227.11(2), Stats.

Explanation of agency authority: The Department licenses and regulates motor vehicle dealers. This rule making deals with the topic of sales facility locations.

Related statute or rule: Ch. 218, Stats., Ch. Trans 138 and 139, Wis. Admin. Code.

Plain language analysis: This rule amendment relates to temporary sales locations, such as at fairs or auto shows, by licensed Wisconsin motor vehicle dealers. Chapter Trans 138 requires that licensed dealers maintain business facilities in the state. In addition, ch. Trans 138 allows licensed Wisconsin dealers to conduct a certain number of sales at temporary sales locations during a year.

Recently, ch. Trans 138 was amended to permit out-of-state motor vehicle sellers, such as Internet vendors, to be licensed as dealers in this state and to sell vehicles to Wisconsin residents via the Internet or similar methods without having to maintain business facilities in the state.

This rule making clarifies two points. First, a licensed Wisconsin motor vehicle dealer's business facilities must be a permanent building in the state of Wisconsin. Second, persons who avail themselves of the out-of-state dealer licensing provisions available to internet sellers may not conduct face-to-face sales in Wisconsin without first obtaining permanent facilities in this state like any other Wisconsin based dealership. To conduct face-to-face sales within the state, a dealer must have a permanent facility in this state.

An exception to this requirement is adopted for motor home rallies organized by national or state motor home groups having at least 100 members. The Family Motor Coach Association conducts "regional rallies" around the Midwest that a few hundred camping families attend. These rallies typically include motor home shows at which new

motor homes are displayed. Manufacturers do not show the motor homes at these rallies, but dealers do so. Because these rallies are held extremely infrequently and there is no history of a regulatory problem with these rallies, the Department has excluded them from the application of this rule making.

This rule making does not, however, negate any contractual geographic limitations upon participating dealers raised by manufacturer franchise agreements. The enforcement of those private agreements is left to the private parties and court system and is not a regulatory function of the Department of Transportation.

Summary of, and preliminary comparison with, existing or proposed federal regulation: Motor vehicle dealers are not licensed by the federal government.

Comparison with Rules in Adjacent States:

Michigan: Does not require out-of-state dealers to obtain a license to attend a temporary sales location at an RV show or event. Michigan dealers are required to obtain an additional application and provide 30 days notice for participation. Different procedures are required for Michigan dealers depending upon if the temporary location is inside or outside the county of licensure.

Minnesota: Allows out-of-state dealers to sell up to five vehicles without a Minnesota license. If more than five vehicles are sold, the out-of-state dealer must consign them to a Minnesota licensed dealer. Minnesota licensed dealers are required to notify the registrar of motor vehicles of each temporary place of business.

Illinois: Out-of-state RV dealers may attend trade shows, including RV owner gatherings, if two Illinois-licensed RV dealers attend. The out-of-state dealers may display only.

Iowa: Requires dealers to be licensed and have an established place of business in the state. Off site sales or display at "Fair," "Vehicle Show," or "Vehicle Exhibition" requires an application and fee. The Department (Transportation) may grant a variance from the requirements of these rules and grant a special limited permit for the display only of motor homes or travel trailers at a convention sponsored by an established national association, if the Department determines that granting the permit would not encourage evasion of these rules and that the public interest so demands. The Department may impose alternative permit requirements.

Summary of factual data and analytical methodologies used and how the related findings support the regulatory approach chosen: From October 1, 2003, to September 30, 2005, there were nine out-of-state dealers that were exempt from the business facility requirement. None currently has approval to conduct sales at a temporary sales location. Of these nine out-of-state dealers, nine had previously received approval to conduct sales at temporary sales locations. All approvals have expired.

Analysis and supporting documentation used to determine effect on small businesses: This rule will affect any out-of-state dealers who are required to have a Wisconsin motor vehicle dealer license in order to sell to Wisconsin residents via face-to-face sales. This rule making will require such dealers to establish permanent offices in this state. So long as these dealers confine their sales to Internet, telephone or other remote sale methods, those dealers will be exempt from requirement of keeping a Wisconsin business facility. Such dealers will, however, be prohibited from selling vehicles at temporary sales locations, fairs and conventions. There are no businesses that hold a Wisconsin dealer license and are exempt from business facility requirement, which are currently allowed to hold sales at temporary sales locations.

Effect on small business: This rule will have no impact on licensed Wisconsin motor vehicle dealers who have business facilities in Wisconsin and sell to Wisconsin residents. These businesses will continue to be able to sell vehicles at temporary sales locations. This rule will affect businesses not located in Wisconsin that wish to be exempt from the Wisconsin business facility requirement. There are currently no licensees that lack permanent facilities in this state.

This rule making may also limit out-of-state participants at car shows, conventions and fairs from selling motor vehicles at those events without first establishing Wisconsin business facilities. This will not affect manufacturer shows where motor vehicles are displayed but not sold. 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 and anticipated costs incurred by private sector: 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. The Department estimates that there will be no fiscal impact on state revenues or liabilities. There will be no fiscal impact or anticipated costs incurred by the private sector as a result of this rule.

Agency contact person and copies of rule: Copies of the rule may be obtained, without cost, by writing to Carson Frazier, Department of Transportation, Division of Motor Vehicles, Bureau of Vehicle Services, Room 253, P. O. Box 7911, Madison, WI 53707-7911. You may also contact Ms. Frazier by phone at (608) 266-7857.

TEXT OF RULE

SECTION 1. Trans 138.03(1)(a)(intro.) and (6) are amended to read:

Trans 138.03(1)(a)(intro.) A permanent building in this state wherein there are facilities for:

(6) A motor vehicle dealer who is not located in this state, who accepts vehicle purchase orders or lease agreements placed by fax, telephone, the Internet, mail, or some other remote means from persons within this state, and who delivers vehicles to persons within this state is exempt from the dealer business facilities requirements of sub. (1), provided that the dealer maintains a business office in another jurisdiction at which the books, records and files pertaining to vehicle sales or leases to persons in this state are maintained and the dealer makes these documents available to the department for inspection upon demand. Nothing in this section shall be construed to exempt the dealer from the license requirement of s. 218.0114(1), Stats.

SECTION 2. Trans 138.08(5) is created to read:

Trans 138.08(5)(a) *Permanent facilities required.* The dealer maintains a permanent facility in this state in the manner required by s. Trans 138.03(1)(a), except as provided in par. (b).

NOTE: Dealers without permanent facilities in the state may not conduct any sales in this state, including sales at temporary locations, except as provided in s. Trans 138.03(6).

(b) *Motor home exemption.* The department may exempt a dealer from the facility requirement in par. (a), but not from any other requirement of state law, if the dealer is selling motor homes at a rally or show sponsored by an established state, national or international motor home or camping association with a minimum membership of 100 members. An exemption under this paragraph may not be granted by the department more than once in any 4-year period. Any license issued by the department containing the exemption described in this paragraph shall be limited to one specific event and may not exceed 10 days duration. An exemption granted under this paragraph will not exempt a

dealer from geographic sales restrictions contained in a dealer franchise agreement or other private contractual obligation.

Note: All off-premise sales in Wisconsin are limited to 10 days. s. Trans 138.08(2), Stats. All other licensing and permit requirements of state law, including administrative rules issued by the Department, apply to a motor home dealer granted an exemption under this paragraph. A Wisconsin dealer having franchise rights in the area in which the show is conducted is not prevented from enforcing those rights by the exemption in par. (b).

(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 ____ day of July, 2007.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation