

NOTICE OF PROPOSED GUIDANCE DOCUMENT

PlainDealingJuly2020

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on PlainDealingJuly2020, a proposed guidance document.

PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website:

<https://trust.dot.state.wi.us/act369/?id=DMV1012&uri=file:PlainDealingJuly2020&division=DMV&tags=DAS>

2. Mailing written comments to:

Division of Motor Vehicles
Wisconsin Department of Transportation
4822 Madison Yards Way
PO Box 7336
Madison, WI 53707-7336

WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT

The final version of this guidance document will be posted at wisconsin.gov to allow for ongoing comment.

AGENCY CONTACT

DOTDMVGuidanceDocs@DOT.WI.GOV



Plain Dealing

A policy and administrative bulletin for licensed dealers from the WisDOT DMV Dealer and Agent Section



July 2020 v. 21, no. 3

Plain Dealing and PARTNER Press: two newsletters cover all aspects of your business

For decades Plain Dealing has provided information that is critical to helping dealers run their business. The focus is on policy and regulation updates, advertising and licensing requirements, and enforcement.

We created a newsletter with information tailored to dealer processing staff. PARTNER Press covers the latest developments in DMV's new eMV PARTNER title and registration processing

Anyone who has registered with eMV PARTNER will now also receive PARTNER Press. Both newsletters will also be publicly available on our website, www.wisconsin-dot.gov.

Advertising guidelines for dealers



In March 2020, the Field Investigation Unit (FIU) began a statewide audit of advertising on dealer websites. The goal is to help dealers identify practices inconsistent with state guidelines.

The large number of dealers in Wisconsin means many have yet to be contacted. The initial results of the program make it clear that dealers want to do business the right way and want tools and resources. Don't wait to be contacted to start making changes.

Here are the most common violations:

1) MSRP. When advertising savings from Manufacturer's Suggested Retail Price (MSRP), a disclosure must be included stating that MSRP may not represent the actual sales price.

The Federal Trade Commission (FTC) has raised concerns that using MSRP in advertising implies that vehicles are commonly sold at MSRP. To be consistent with federal guidelines, WisDOT requires this disclosure under [Wis. Admin. Code ch. Trans 139.03\(1\)](#) or [Wis. Admin. Code ch. Trans 139.03\(1\)](#).

2) Fuel economy. When advertising fuel economy, it must be made clear that the fuel economy rating is an EPA estimate. Include in the ad the statement "Per EPA estimates" alongside the fuel economy rating or in a footnote.

EPA estimates are not the only source of fuel economy, but they are the most widely recognized. Clearly identifying the fuel economy source avoids any potential for deception and violation of [Wis. Admin. Code ch. Trans 139.03\(1\)](#) or [Wis. Admin. Code ch. Trans 139.03\(2\)\(a\)](#).

3) Advertised Price. Per [Wis. Admin. Code ch. Trans 139.03\(3\)\(a\)](#) any advertised price must include all costs the customer must pay to purchase the vehicle, with the exception of tax, title, registration, and an (optional) service fee. The advertised price should include any charges for freight, delivery, vehicle set-up, assembly, etc. that are passed onto the customer.

4) Service fee. The service fee is an optional fee charged to a customer for costs associated with sales-related vehicle inspection or forms. Service fees have [previously been discussed in Plain Dealing](#). [Wis. Admin. Code ch. Trans 139.05\(8\)\(a\)](#) specifically refers to allowing a "service fee" charged to purchaser or lessee, and [Wis. Admin. Code ch. Trans 139.03\(3\)\(a\)](#) allows the service fee to be excluded from the advertised price as long as it is disclosed as not being included in the price.

Many disclosures will use similar or unrelated language that may imply a service fee, but these terms are not recognized by administrative code. Using phrases such as "dealer fee," "processing fee," "administrative fee," or any other term except "service fee" is considered a violation of [Wis. Admin. Code ch. Trans 139.03\(3\)\(a\)](#).

5) Manufacturer Rebates. Only manufacturer rebates everyone qualifies for may be applied to an advertised price. Conditional rebates (e.g., "First Time Graduate" or "Military" incentives) or rebates that require specific financing terms (e.g., "Must finance through XYZ Credit to qualify") are prohibited from being included in vehicle pricing.

[Wis. Admin. Code ch. Trans 139.03\(3\)\(a\)](#) states in part:

"When the price of a motor vehicle is advertised by a dealer licensee, or a group of dealer licensees are named in a joint advertisement, the advertised price shall include all charges that shall be paid by the purchaser to acquire ownership of the vehicle with the exception of sales tax, title and registration fees."

Including conditional rebates is violation of administrative code since most purchasers will need to pay more than advertised to obtain the vehicle. This interpretation of [Trans 139.03\(3\)\(a\)](#) is consistent with FTC guidelines related to Operation Ruse Control, a federal crackdown on deceptive advertising practices.

However you can list as many conditional rebates you like in an advertisement, as long as it makes clear these rebates are not included in the advertised price.

NOT ALLOWED	ALLOWED
MSRP \$20,000	MSRP \$20,000
Dealer Discount -\$1000	Dealer Discount -\$1000
Customer Cash -\$1000	Customer Cash -\$1000
College Cash Back -\$500	Sale Price \$18,000
Military Rebate -\$500	College Cash Back -\$500
Sale Price \$17,000	Military Rebate -\$500

When manufacturer rebates are applied to an advertised price, it must be clearly disclosed the rebates are available to everyone. A footnote should be included stating: "Manufacturer rebates applied. Everyone qualifies."

6) Itemizing Discounts and Rebates. Dealer Discounts and multiple manufacturer rebates should be clearly itemized when included in advertised pricing. Avoid one bundled savings amount unless the ad clearly itemizes the incentives elsewhere or a footnote is hows the discounts and rebates.

7) Dealer's responsibility. Many dealers use outside providers to maintain and update their webpage. Regardless of who is maintaining the webpage, it is ultimately the responsibility of the licensee to present information in a manner consistent with Wisconsin law. Disclaimers that attempt to deflect liability (e.g. "Dealer cannot be held liable for data listed incorrectly" or "Customer is responsible for verifying accuracy of information presented in this ad") does not make a dealer immune to enforcement action.

Please take this opportunity to review all forms of advertising and make necessary corrections in accordance with the above guidelines. We will continue our audit of online dealer advertising and contact dealers found violating advertising regulations. Failure to correct such violations can lead to enforcement action against your dealer license, including citations.

For any questions regarding advertising regulation, please contact Tristan Kloss at Tristan.Kloss@dot.wi.gov

Vehicles advertised as "Coming Soon" on websites

Your dealership took a much sought-after vehicle in on trade, or is expecting to, and you want to start advertising it. Not so fast! Dealers cannot advertise vehicles not yet available for sale

Listing vehicles as "Coming Soon" or an equivalent phrase is an unfair practice and is prohibited because the vehicle is not available for purchase, has not been inspected or you may not have the title and cannot anticipate when you would receive it.

Offering a vehicle for sale that is not yet available to you would be a violation of [Wis. Admin. Code ch. Trans 139.03 \(10\)](#) which states "It is an unfair practice for a licensee to advertise motor vehicles or types of motor vehicles for sale unless the licensee has available, for delivery within a reasonable time, a quantity of the advertised vehicles sufficient to meet reasonably anticipated demands, unless the advertisement clearly and specifically discloses any limitations as to the quantity available or time of delivery."

Offering a vehicle for sale without a properly completed WI Buyer's Guide would violate [Wis. Admin. Code ch. Trans 139.04 \(6\)](#) which states in part, "Each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department."

Lastly, the law requires the dealership to have the ownership document when it offers a vehicle for sale. If you do not have the title or MSO, you could be violating [Wis. Admin. Code ch. Trans 138.04 \(1\)\(a\)](#) which states in part, "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."

Wisconsin law now recognizes autocycles



Effective May 1, 2020, Wisconsin law re-classified a three-wheeled vehicle with a steering wheel and a seat that drivers do not straddle as an AUTOCYCLE.

Most autocycles in Wisconsin are Polaris Slingshots.

Since autocycles are classified as three-wheeled motor vehicles, they require the motor vehicle (MV) dealer license to sell. Motorcycle (MC) dealers who sold these vehicles prior to May 1, 2020, are also allowed to sell autocycles. Dealers can issue a temporary plate; the temporary plate is the standard (full-size) plate issued to other autos. Mail all title applications to DMV for processing.

DMV is contacting customers who own these as they were previously titled and registered as motorcycles.

Emissions repair-cost limit increases to \$935

The repair cost limit for all model year vehicles subject to emissions testing increases from \$918 to \$935, effective July 1, 2020. This figure is adjusted annually by the DNR per [NR 485.045](#).

Vehicles subject to emissions testing that continue to fail may be eligible for a cost waiver if actual costs of emissions-related repairs exceed the repair cost limit. **Only repairs that are related to the vehicle's cause of failure can be used to apply for a cost waiver.** Costs covered by any warranty or costs to repair/replace emission control equipment that has been removed, modified or disconnected are excluded.

The owner must have emissions related repairs performed on the vehicle at a recognized repair facility to qualify for waiver consideration. A list of recognized repair facilities may be found at: www.wisconsinvip.org.

The application form to apply for Recognized Repair Shop status may also be found at the above link. Wis Admin. ch. Trans 131.02(39) includes franchised new car dealerships as recognized repair facilities.



DAS quarterly report numbers

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

Field Investigation Unit (FIU)

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

Activity	First Quarter
FIU Complaints Closed	534
FIU Inspections (Dealers)	337
FIU Educational Presentations	0

Enforcement	FirstQuarter
Advisory letters	66
Warning letters	52
Citations	114
Denials/cancellations	20
Criminal charges/arrests	3

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	First Quarter
APU phone calls	14,838
DLU phone calls	5,106
Business licenses issued	727
Individual licenses issued	4,794

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	First Quarter
Lemon Law inquiries	161

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

What's in PARTNER Press?



In the July 2020 issue of *PARTNER Press* you'll discover...

- ...e-signature requirements for vehicle sales transactions
- ...when dealers can receive title-only in their name
- ...use of temporary plates for out-of-state customers
- ...the right way to order replacement products online
- ...and more!

[Read PARTNER Press on WisDOT's website.](#)

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