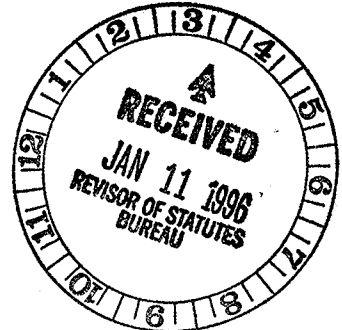


Clearinghouse Rule 95-087

CERTIFICATE



STATE OF WISCONSIN )  
 ) ss.  
DEPARTMENT OF TRANSPORTATION )

TO ALL WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, CHARLES H. THOMPSON, Secretary of the Wisconsin Department of Transportation and custodian of the official records, do hereby certify that the rule, relating to the **security requirements for motor vehicle dealers and other licensees and the conditions under which financial statements may be required**, was duly approved and adopted by this Department on January 11, 1996.

I further certify that this copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department of Transportation at 4802 Sheboygan Avenue, in the City of Madison, Wisconsin, this 11 day of January, 1996.

*Charles H. Thompson*  
\_\_\_\_\_  
CHARLES H. THOMPSON  
Secretary

The Wisconsin Department of Transportation adopts an order to repeal TRANS 140.01(2)(b), 140.10, 140.20(1), 140.21(1)(c)5, 140.22(1)(d) to (f) and 140.28(2); renumber TRANS 140.02(1), (3) to (5) and (7), and 140.21(1)(c)6; renumber and amend TRANS 140.01(2)(am), 140.02(2) and (6), 140.20(1m) and 140.28(1); amend ch. TRANS 140 subch. I title, 140.01(1), 140.03(1)(intro.), (e) and (g), 140.05(2), 140.20(2) and (7m), 140.21(1)(a) to (c)4, (d), (2)(a) to (e), (3) and (5)(a) to (b)2, 140.22(intro.), (1)(title), (intro.), (a) and (b), and (2)(title), (intro.) and (b), 140.23(1)(a) to (c) and (3), 140.24(1)(intro.) and (a) to (j), 140.25, 140.26(title), (1)(a), (2)(a), (b)1 to 5, (4)(b), (5)(a) to (c), (6) and (8), and 140.27; repeal and recreate TRANS 140.09(2)(a); and create TRANS 140.02(1) to (3), (5), (8), (9) and (13), 140.022, 140.027 and 140.028, relating to the security requirements for motor vehicle dealers and other licensees and the conditions under which financial statements may be required.

**ORDER ADOPTING RULE****Analysis Prepared by the Wisconsin Department of Transportation**

STATUTORY AUTHORITY: ss. 85.16(1), 218.01(5)(c) and 227.11(2), Stats.

STATUTES INTERPRETED: ss. 218.01(2)(bb) and (h), Stats.

**General Summary of Rule.** These changes in ch. Trans 140 are in response to recent statutory changes in the Department's dealer licensing program:

- Eliminating the requirement that all applicants for motor vehicle dealer licenses submit financial statements to the department with their applications, unless the Department has reasonable cause to doubt the dealer or applicant's financial responsibility or its compliance with § 218.01, Stats.
- Requiring all motor vehicle dealer licensees to post and maintain a surety bond or letter of credit of at least \$25,000 or, if the dealer or applicant sells

maintain such security by showing evidence of eliminating problems of financial solvency, irresponsibility, or other violations of § 218.01, Stats.; the Department may respond by erasing the points and ending the requirement for additional security.

- If the points were assigned to a licensee who ceases business activities under its license, but whose owners re-enter business under a different organization, the department may transfer points assessed against the owners to the other organization.

The rule affords the licensee due process by allowing him or her to appeal the Department's decision to require supplemental security when the licensee is unable to obtain such security and whose license is, in effect, revoked by the Department.

The Department may also require supplemental bonds of salespersons. But since the point system and sales criteria are not always appropriate to their situations, the Department will determine their security requirements directly.

**3. Allowability and priority of claims:** The rule disallows any claims by a claimant licensed or required to be licensed under ch. 218 and eliminates the lower priority claims of distributors, dealers or salespeople and claims of the Department of Revenue for income taxes. This leaves three classes of claims: (1) claims of retail customers; (2) claims of commercial customers; and (3) claims of the Department for title and registration fees.

The full amount of the security is intended for consumer protection. Claims of the Department for title and registration fees benefit the consumer by allowing the Department to issue the product the consumer already paid for without having the consumer pay these fees again only to claim them as part of their damages. When the consumer paid the dealer, the dealer was an agent of the Department. Business claims and income tax claims clearly do not have a consumer protection benefit.

When ch. Trans 140 and the bond claims administration section was first written, bonds were strictly optional, provided by only 11% of the dealers and served a very different purpose than they do today. With 100% of the retail dealers providing bonds or letters of credit, the Department needs to protect itself against the possibility of becoming a collection agency for businesses. Wholesale auctions, for example, are discovering bond claims as a means of collecting debts. Businesses have the resources to act quickly in filing claims, and this puts us in a position of acting to reserve these funds for consumers. The evaluation process that precedes payment of claims is delayed and complicated by the number and class of claims received. By eliminating these types of claims, the Department is helping to streamline the evaluation process to the benefit of consumers.

**4. Notice of petition:** The notice of petition provided by the Department will comply with s. 985.07(1), Stats., requiring publication of only one notice in a newspaper of general circulation in the location of the licensee. This reduces from three the number

of times notice must be published and will produce significant savings for the Department as well as streamlining the process to the benefit of the claimants.

**5. Other changes:** The rule clarifies some of the terms used in financial statements; it changes language throughout ch. Trans 140 to reflect the fact that all motor vehicle dealers are required to post bonds or letters of credit; and it removes the provision that gave the Department authority to designate the surety as agent for determining claims.

**Fiscal Estimate.** One-time costs will be incurred by the need to modify current database files to capture dealer "points" and supplemental security. However, these costs are expected to be minimal and may be absorbed under current programs.

Administering the supplemental security system is not expected to require any additional work, since assessments depend on determinations of financial solvency and compliance with § 218.01, Stats., which are already programs operated by the Department.

**Final Regulatory Flexibility Analysis.** The rule will have no adverse effect on small businesses beyond any effect imposed by the statutes.

**Contact Person.** For questions regarding the rule, contact Joan Loden, Dealer Section, Wisconsin Department of Transportation, P.O. Box 7909, Room 806, 4802 Sheboygan Avenue, Madison, Wisconsin, 53707-7909; or by phone at (608) 267-0404. Alternate formats of the rule will be provided to individuals at their request.

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### **TEXT OF RULE**

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 218.01(5)(c) and 227.11(2), Stats., the department of transportation hereby adopts an order amending a rule interpreting ss. 218.01(2)(bb) and (h), Stats., relating to the security requirements for motor vehicle dealers and other licensees and the conditions under which financial statements may be required.

**SECTION 1.** Chapter Trans 140 Subchapter I (title) is amended to read:

Subchapter I -- Dealer Licensing Security and Financial Eligibility Requirements

**SECTION 2.** Trans 140.01(1) is amended to read:

Trans 140.01(1) STATUTORY AUTHORITY. As authorized by ss. ~~140.06(1)~~, 218.01(5), 218.25, and 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of s. 218.01 (2)(b), (bb), (h) and (j) and (3)(a)1 and 7, Stats., relating to the security requirements and financial qualifications of motor vehicle wholesaler, ~~and dealer, and salesperson~~ license applicants, s. 218.11(3) and (6)(a) and (g), Stats., relating to the financial qualifications of mobile home dealer license applicants to engage in the sale of recreational vehicles, and s. 218.21(1), (1m), (4) and (6), and 218.22(1) and (3)(a) and (g), Stats., relating to the financial qualifications of motor vehicle salvage dealer license applicants, and s. 218.41(2)(c) and (3)(a), Stats., relating to the financial qualifications of moped dealer license applicants.

**SECTION 3.** Trans 140.01(2)(am) is renumbered Trans 140.01(2)(b) and amended to read:

Trans 140.01(2)(b) The provisions of subch. II apply to all applicants for a license issued by the department under ch. 218, Stats., and to all such licensees, who furnish a bond or letter of credit pursuant to ss. 218.01 (2) (bb), or (h), ~~or (j)~~, 218.11(3) or (6)(g), 218.21(4) or (6), or 218.33(1), Stats. The provisions of subch. II also apply to all sureties ~~for~~ and financial institutions that issue such bonds or letters of credit, and to all claimants against such bonds or letters of credit.

**SECTION 4.** Trans 140.01(2)(b) is repealed.

**SECTION 5.** Trans 140.02(1) is renumbered 140.02(4).

**SECTION 6.** Trans 140.02(1) is created to read:

Trans 140.02(1) "Asset" means anything of value owned by the corporation, limited liability company, partner or sole proprietor.

**SECTION 7.** Trans 140.02(2) is renumbered 140.02(6) and amended to read:

Trans 140.02(6) "Financial statement" means a balance sheet showing assets, liabilities, and net worth on a fixed date.

**SECTION 8.** Trans 140.02(2) is created to read:

Trans 140.02(2) "Current assets" means cash and assets, including trade or investment items, which may be readily converted into cash in the ordinary course of business within one year from the date of the balance sheet and include, but are not limited to, cash and equivalent, customer and factory receivables, inventories, last in first out reserves and marketable securities.

**SECTION 9.** Trans 140.02(3) is renumbered 140.02(7).

**SECTION 10.** Trans 140.02(3) is created to read:

Trans 140.02(3) "Current liabilities" means liabilities which are due and payable within one year from the date of the balance sheet.

**SECTION 11.** Trans 140.02(4) and (5) are renumbered 140.02(10) and (11), respectively.

**SECTION 12.** Trans 140.02(5) is created to read:

Trans 140.02(5) "Financial institution" has the same meaning as found in s. 705.01(3), Stats.

**SECTION 13.** Trans 140.02(6) is renumbered 140.02(12) and amended to read:

Trans 140.02(12) "Pro-forma statement" means a financial statement ~~presented~~ anticipating that presents information that anticipates some event or events which will occur in the future.

**SECTION 14.** Trans 140.02(7) is renumbered 140.02(14).

**SECTION 15.** Trans 140.02(8), (9) and (13) are created to read:

Trans 140.02(8) "Letter of credit" means an irrevocable instrument issued by a financial institution guaranteeing payment on behalf of its customer to a beneficiary for a stated period of time and when certain conditions are met.

(9) "Liability" means an obligation to pay money or other assets or to render a service to another person.

(13) "Recreational vehicle dealer" has the same meaning as found in s. Trans 142.02(7).

**SECTION 16.** Trans 140.022, 140.027 and 140.028 are created to read:

**Trans 140.022 SECURITY; FORMS AND TYPES.** (1) FORMS OF SECURITY.

The only acceptable forms of security to fulfill the security requirements of s. 218.01, Stats., are as follows:

(a) Surety bonds. The bond shall be filed on a form prescribed by the department and issued by a bonding company licensed by this state and acceptable to the department. The bond shall be payable in the name of the department for the benefit of any person who sustains a loss because of an act of the licensee constituting grounds for the suspension or revocation of a license under s. 218.01, Stats.

**NOTE:** Under ss. 632.14 to 632.18, Stats., surety insurance is regulated by the Commissioner of Insurance.

(b) Letters of credit. The letter of credit shall be filed on a form prescribed by the department and issued by a financial institution acceptable to the department. The issuer shall waive the right to revoke the credit before its expiration date, which shall be no earlier than 3 years after the last day of the period covered by the letter. The letter of credit shall be payable in the name of the department and upon a written statement

by the department that one or more persons have sustained a loss because of acts by the licensee constituting grounds for the suspension or revocation of a license under s. 218.01, Stats.

**NOTE: These forms may be obtained by contacting the Dealer Section's Business Licensing Unit at (608) 266-1425.**

(2) **MINIMUM SECURITY.** A motor vehicle dealer or applicant for a motor vehicle dealer license shall provide and maintain in force a bond or letter of credit of not less than \$25,000, or if the dealer or applicant sells or proposes to sell motorcycles and not other types of motor vehicles, a bond or irrevocable letter of credit of not less than \$5,000.

(3) **SUPPLEMENTAL SECURITY.** In addition to the security required under sub. (2), the department may require a motor vehicle dealer, or applicant for a motor vehicle dealer license, to provide and maintain in force a supplemental bond in an amount not less than \$5,000 nor more than \$100,000. The department may also require such securities of wholesalers and motor vehicle salespersons and applicants for such licenses. The department shall require such bonds according to the criteria described in s. Trans 140.027.

**Trans 140.027 CRITERIA FOR SUPPLEMENTAL SECURITY.** (1) **AMOUNT.** The department may require supplemental bonds of motor vehicle dealers or wholesalers according to their annual vehicle sales and their total points in the current licensing period. The department shall provide a licensee or applicant written notice of the requirement for supplemental security. The department may require supplemental securities of applicants for such licenses according to the department's estimates of their annual retail vehicle sales and their total points for the licensing period for which the



application is made. The department may determine or estimate points and annual vehicle sales according to subs. (2) and (3). Bonds shall be in the amounts described in the following table:

**SUPPLEMENTAL BOND CALCULATION**

Number of points	1	2	3	4	5	6 or more
Number of vehicles sold at retail per year						
0-249	5,000	10,000	15,000	20,000	25,000	30,000 to 50,000
250-999	15,000	23,000	30,000	38,000	45,000	55,000 to 75,000
1,000 and above	25,000	35,000	45,000	55,000	65,000	75,000 to 100,000

(2) DETERMINING POINTS. (a) General. The department may assess points against a licensed dealer or wholesaler, or an applicant for a license, who has violated any provisions in s. 218.01, Stats., or rules interpreting s. 218.01, Stats., that constitute grounds for the suspension or revocation of their license. The department may also assess points against a licensed dealer, wholesaler, or an applicant for a license when the department has reasonable cause to doubt the licensee or applicant's financial responsibility or solvency. The department shall provide a licensee or applicant written notice of a point assessment. Written notice of a point assessment shall specify the reasons for the point assessment, including the issuance of a complaint to revoke or suspend a license, a written stipulation to a conditional license, a civil forfeiture complaint or citation, notice of denial of a license, and a special order issued by the

division of hearings and appeals. All points assessed by the department shall remain in effect for the duration of the current licensing period, and any new point assessments shall be added to the existing point total for that licensee throughout the current licensing period.

(b) Effect of point assessments from previous licensing period. The department may assess additional points or carry over points to a new licensing period under the following conditions:

1. The department may assess additional points for current violations when point assessments in previous licensing periods demonstrate a pattern of violations or repeat offenses.

2. The department may carry over point assessments from one licensing period to the next period for which a dealer or wholesaler makes application if a significant share of the licensee's or applicant's ownership or employees includes persons who were assessed points, or who were directly involved in violations causing points to be assessed, when they were last licensed by the department.

(c) Appeals to eliminate point accumulations. A licensee may, after 12 months of posting additional security, submit to the department evidence of eliminating the compliance or financial problems cited by the department when it assessed points, and ask that the department reduce or eliminate the licensee's current points. The licensee may submit only one request regarding the same point assessments during the licensing period.

(d) Point assessments. The department may assess points according to the following table:

Grounds for assessing points	No. of points per violation
Ss. 218.01(2)(a), (b), (bb), (h); (3)(a)7, 31; 342.06(2), 342.16(1m), 347.415, Stats.	4-6
Ss. 218.01 (3) (a) 4, 5, 6, 8, 9, 10, 11, 14, 18, 19, 25, Stats., where the department has estimated that the loss to the consumer was greater than \$500	4-6
Ss. 218.01 (3) (a) 4, 5, 6, 8, 9, 10, 11, 14, 18, 19, 25, Stats., where the department has estimated that the loss to the consumer was less than or equal to \$500	1-3
Other provisions of s. 218.01, Stats., not specifically listed in this table	1-3
S. 218.01 (3) (a) 1, Stats., where the department has found financial insolvency or irresponsibility as demonstrated by:	
Ratio of current assets to current liabilities is less than 1.25 but greater than or equal to 1.00	1-3
Total assets exceed total liabilities, but by less than 35 percent	1-3
Ratio of current assets to current liabilities is less than 1.00; or negative net worth	6
Other indications of financial insolvency or irresponsibility not specifically listed in the table	1-3

(3) DETERMINING ANNUAL VEHICLE SALES. For the purpose of using the table in sub. (1), the number of vehicles sold per year may be defined as any of the following:

(a) Total number of motor vehicles sold at retail during the previous 12 months from the date requested by the department, the most recent calendar year, the most recent fiscal year when the dealer had been licensed, or the most recent year represented on the licensee's application, at the discretion of the department.

(b) Projected number of motor vehicles to be sold at retail during the next 12 months, based on the business' most recent quarterly sales.

(c) Projected number of motor vehicles to be sold at retail during the next 12 months, based on the best information available to the department.

(4) APPEALS. (a) A person adversely affected by any of the following actions may request an informal hearing from the department before the action becomes effective:

1. The issuance of written notice assessing points under this section.

2. The issuance of written notice requiring supplemental security under this section.

(b) A request for informal hearing on an action under par. (a) shall be made in writing and shall be filed with the department within 10 days after the licensee or applicant receives notice of the department's action.

(c) If the department receives a written request for an informal hearing, the department shall conduct a prompt informal hearing before a department employee or official who was not personally involved in the investigation or decision to take the action, and who has the authority to withdraw, modify or correct the action as necessary. The informal hearing shall be conducted within 10 business days after a request for informal hearing is received by the department, unless the person requesting the informal hearing agrees to a later date. An informal hearing may be conducted by telephone or at the department's offices.

(d) Within 5 business days after the conclusion of an informal hearing, the department shall issue a brief written memorandum which summarizes the informal hearing, and any decision or action resulting from the informal hearing. A copy of this memorandum shall be provided to the person requesting the informal hearing.

(e) The department's decision is final, and no further appeals may be submitted or considered.

**NOTE: If the department initiates an action to deny, suspend, or revoke a license because of failure to obtain supplemental security, the affected licensee or applicant is entitled to a full evidentiary hearing before the division of hearings and appeals, pursuant to s. 218.01 and ch. 227, Stats.**

**Trans 140.028 WHEN FINANCIAL INFORMATION IS REQUIRED.** (1) The department may require a motor vehicle dealer or any other business licensed under ch.

218, Stats., or any applicant for such licenses, to submit information relating to its financial standing, solvency, or responsibility under any one of the following circumstances:

(a) The department has reasonable cause to doubt the financial responsibility of the applicant or licensee.

(b) The department has reasonable cause to doubt the applicant or licensee's compliance with ch. 218, Stats., or its related rules, where the violation constitutes grounds for suspension or revocation of a license. 'Reasonable cause' includes a situation in which the licensee, applicant or employes of the licensee or applicant have been found by the department to have violated ch. 218, Stats., or rules interpreting ch. 218, Stats., anytime during the current or the immediately previous licensing period.

(c) The applicant or licensee is a motor vehicle salvage dealer that has not supplied a bond per s. 218.21(4)(a), Stats., under the conditions specified in s. 218.01(2)(h)2, Stats.

(d) The applicant or licensee is a recreational vehicle dealer.

(e) The applicant or licensee is a wholesaler.

(f) The applicant or licensee is a moped dealer.

(2) Failure to provide the financial information required under sub. (1) shall be grounds for denial or revocation of the license.

**NOTE: Provisions for protection of trade secrets are found in ss. 19.36(5), 134.90(1)(c) and 218.01(2)(h)3, Stats.**

**SECTION 17.** Trans 140.03(1)(intro.), (e) and (g) are amended to read:

**Trans 140.03 BALANCE SHEET INFORMATION.** (1)(intro.) All-licensee If required by the department, licensees or applicants shall submit a balance sheet dated not more

than 90 days prior to the date of ~~application~~ submission, that is prepared in accordance with generally accepted accounting principles. A small business as defined in s. ~~277.016~~ 227.114, Stats., which does no interim financial reporting may submit a balance sheet from the close of the business' most recent fiscal year. The balance sheet shall contain the following:

(e) The name of any ~~bank or~~ financial institution used by the applicant.

(g) A schedule of all real property held, its fair market value, book value and the amount and terms of any indebtedness.

**SECTION 18.** Trans 140.05 (2) is amended to read:

Trans 140.05 (2) RATIO ANALYSIS. A ratio analysis comparing current liabilities with current assets shall be used to evaluate a dealer's financial potential. Current liabilities which exceed current assets ~~shall~~ may be grounds for the denial, suspension or revocation of a dealer's license. ~~An exception to this section will be when the current ratio is less than 1 to 1 solely due to the manner the dealership has chosen to account for leasing operations.~~

**SECTION 19.** Trans 140.09(2)(a) is repealed and recreated to read:

Trans 140.09(2) ACCEPTABLE NET WORTH. (a) The following guidelines are used in determining the acceptable level of net worth of an applicant:

Dealer Type

New Auto or Truck	\$25,000 bond or letter of credit required
Used Auto or Truck	\$25,000 bond or letter of credit required
Motorcycle and not other motor vehicles	\$5,000 bond or letter of credit required
Motorcycle and other motor vehicles	\$25,000 bond or letter of credit required

Recreational Vehicle	Minimum required ratio of total assets to total liabilities of 1.4
Moped	Minimum required ratio of total assets to total liabilities of 1.4
Motor Vehicle Wholesaler	Minimum required ratio of total assets to total liabilities of 1.4
Motor Vehicle Salvage	Minimum net worth of \$5,000

**SECTION 20.** Trans 140.10 is repealed.

**SECTION 21.** Trans 140.20(1) is repealed.

**SECTION 22.** Trans 140.20(1m) is renumbered Trans 140.20(1) and amended to read:

Trans 140.20(1) A ~~"claim arose"~~ "Claim arose against the bond or letter of credit of a bonded licensee licensee" when means a situation in which a cause of action has accrued against the bonded licensee ~~accrued~~. Unless otherwise provided by statute, a cause of action accrues where there exists a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it. A tort claim accrues when the injury is discovered or reasonably should have been discovered.

**SECTION 23.** Trans 140.20(2) and (7m) are amended to read:

Trans 140.20(2) "Commercial customer" means a private person who buys or agrees to buy one or more motor vehicles from the ~~bonded~~ licensee for the person's business or commercial use. A private person who sells, trades, or consigns to the ~~bonded~~ licensee a motor vehicle used by the person primarily for business or commercial purposes is also a commercial customer.

(7m) The "period covered by the ~~bond~~ security" is co-extensive with the ~~annual calendar-year~~ biennial license, issued under ch. 218, Stats., which is conditioned on providing the ~~surety-bond~~ security in question. If the ~~annual~~ biennial license is extended

by operation of s. ~~227.14(2)~~ 227.51(2), Stats., the period covered by the ~~bond~~ security also is extended and remains co-extensive unless sooner cancelled by the surety. ~~The beginning date shall be January 1, unless the standard bond form filed with department expressly states otherwise. The ending date shall be the earlier of: a) December 31 of the license year, or b) the expressly stated ending date on the filed bond form, or c) the effective date of cancellation of the bond as provided on the standard bond form. If the bond form filed with the department provides for automatic renewal of the surety coverage or states that a period of more than the calendar year is covered, the beginning date shall be January 1 annually and the ending date shall be December 31 annually, until the express ending date or cancellation date is reached.~~

**NOTE:** ~~The bond forms~~ Forms for bonds and letters of credit are available from the Dealer License Section, Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707-7909.

**SECTION 24.** Trans 140.21(1)(a) to (c)4 are amended to read:

Trans 140.21(1)(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant;:

(b) The claim arose during the period covered by the ~~bond~~ security; and,:

(c) The claimant's loss shall be caused by an act of the ~~bonded~~ licensee, or his or her the claimant's agents or employes, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a ~~bonded~~ secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1 to 14, 18 to 21, 25 or 27 to 31, Stats.;

2. A ~~mobile-home~~ recreational vehicle dealer license, in the case of a bonded ~~mobile-home~~ recreational vehicle dealer, pursuant to s. 218.11 (6), Stats.;



3. A salvage dealer license, in the case of a bonded salvage dealer, pursuant to s. 218.22 (3), Stats.;

4. An auction dealer license, in the case of a bonded auction dealer, pursuant to s. 218.32 (3), Stats.;

**SECTION 25.** Trans 140.21(1)(c)5 is repealed.

**SECTION 26.** Trans 140.21(1)(c)6 is renumbered 140.21(1)(c)5.

**SECTION 27.** Trans 140.21(1)(d), (2)(a) to (e), (3) and (5)(a) to (b)2 are amended to read:

Trans 140.21(1)(d) The claim must be made within 3 years of the last day of the period covered by the ~~bond~~ security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of ~~surety liability~~ protection.

**NOTE:** This paragraph does not ~~supercede~~ supersede any applicable provision of ch. 893, Stats., and does not limit the liability of the ~~bonded~~ licensee in any way.

(2)(a) Any claim by a claimant licensed under ch. 218, Stats., or required to be so licensed, ~~whose claim arises, in whole or in part, from a transaction in which the claimant violated any provision of ch. 218, Stats., or rules adopted thereunder, or which included an act of the claimant which is grounds for suspension or revocation of the claimant's license issued under ch. 218, Stats., as determined by the department;~~

(b) Any claim by the ~~bonded~~ licensee, ~~his or her~~ the licensee's employing dealer, if any, or ~~his or her~~ the licensee's agents, partners, stockholders or employes;

(c) Any claim arising from activities of the ~~bonded~~ licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims

for rent, mortgage payments, wages, commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle;

(d) Any claim by manufacturer, factory branch, factory representative, distributor or distributor representative involving the sale or delivery of a new motor vehicle to the ~~bonded~~ licensee;

(e) Any claim for interest, ~~finance charges~~ or penalties, legal costs, attorney fees, or punitive damages except as otherwise expressly provided in sub. (5); ~~or~~.

(3) ~~The~~ Any of the following acts by a claimant, as determined by the department, may be grounds for disallowing a claim:

(a) Making or offering a false statement, false or altered document, or other misrepresentation in support of a claim against the ~~bond~~; security.

(b) Making a claim based in whole or in part upon a transaction or an act by the claimant which is unlawful or contrary to statute, regulation or administrative rule, as determined by the department;

(c) Failing to make a claim in the manner provided by this subchapter; ~~or~~.

(d) Failure of the claimant to cooperate in the investigation of ~~his or her~~ the claimant's claim, including failure to provide additional supporting documentation or evidence for a claim or to provide other explanatory materials when that information is requested by the department and is readily available to, or known to, the claimant or is in the claimant's possession or control.

(5)(a) When a claimant is unable to obtain title to a motor vehicle because the ~~bonded~~ licensee who held the vehicle for sale created a security interest in the motor vehicle and a manufacturer or financial institution is holding the title or Manufacturers Statement Certificate of Origin (~~MSO~~) (MCO) to ensure payment by the ~~bonded~~ licensee

at the time of sale, the claimant's reasonable expenses, including legal costs and attorney fees, in obtaining requisite title documentation, are allowable claims against the ~~bond~~ security of the ~~bonded~~ licensee.

(b) As alternatives to making the claim described in par. (a), a claimant in such a case may instead do any of the following:

1. Rescind the purchase contract and make a claim against the ~~bond~~ security of the ~~bonded~~ licensee for the full purchase price of the vehicle;

2. Make a claim against the ~~bond~~ security of the ~~bonded~~ licensee for the cost of a title bond prescribed by s. 342.12 (3) (b), Stats. ~~of~~

**SECTION 28.** Trans 140.22(intro.), (1)(title), (intro.), (a) and (b), (2)(title), (intro.) and (b) are amended to read:

**Trans 140.22 PRIORITY OF CLAIMS.** Allowable claims against the ~~bond~~ security shall be assigned to one of the following priority classes:

(1)(title) SALESPERSON, MOTOR VEHICLE AND RECREATIONAL VEHICLE DEALER SECURITIES. The priority classes of allowable claims against the ~~bond~~ security of any ~~bonded~~ licensee except a wholesaler, salvage or auction dealer, in order of their priority, are as follows:

(a) Claims of retail customers including, without limitation, claims arising from a particular motor vehicle purchase from the ~~bonded~~ licensee or from a particular motor vehicle sale ~~to~~ by the ~~bonded~~ licensee, claims for repairs warranted by the ~~bonded~~ licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the ~~bonded~~ licensee to pay the claimant for a trade-in, a motor vehicle purchased by the ~~bonded~~ licensee, or a consigned vehicle not returned to the consignor upon request.

(b) Claims of commercial customers including, without limitation, claims arising from a particular motor vehicle purchase from the ~~bonded~~ licensee or from a particular motor vehicle sale ~~to~~ by the ~~bonded~~ licensee, claims for repairs warranted by the ~~bonded~~ licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the ~~bonded~~ licensee to pay the claimant for a trade-in, a motor vehicle purchased by the ~~bonded~~ licensee, or a consigned vehicle not returned to the consignor upon request.

(2)(title) WHOLESALER, SALVAGE AND AUCTION DEALER BONDS. (intro.) The priority classes of allowable claims against a wholesaler bond, a salvage dealer bond or an auction dealer bond, in order of their priority, are as follows:

(b) All other allowable claims, including claims of the department for title and registration fees ~~and of the department of revenue for income taxes due from the bonded licensee as a result of filing a materially false or fraudulent income tax return as certified by the department of revenue.~~

**SECTION 29.** Trans 140.22(1)(d) to (f) are repealed.

**SECTION 30.** Trans 140.23(1)(a) to (c) and (3) are amended to read:

Trans 140.23(1)(a) The total amount necessary to pay all claims of the class in full shall be determined~~;~~

(b) If enough funds are available under the bond or letter of credit to do so, all claims of the class shall be paid in full~~;~~

(c) If, after all allowed claims of a class have been paid in full, funds remain available to pay additional claims, the allowed claims of the next priority class shall be paid, in accordance with ~~par.~~ pars. (a) ~~through~~ to (d).

(3) The aggregate total of all payments on all claims may not exceed the total amount of the bond or letter of credit available for payment of claims.

**SECTION 31.** Trans 140.24(1)(intro.) and (a) to (j) are amended to read:

Trans 140.24(1)(intro.) Each claim shall be in writing and shall include all of the following:

(a) The name and address of the claimant and a telephone number where the claimant can be reached during normal business hours;.

(b) A description of the nature of the claim and the transaction from which the claim arose, including any specific acts of the ~~bonded~~ dealer which are grounds for suspension or revocation of the ~~bonded~~ dealer's license under ch. 218, Stats.;

(c) The date on which the claim arose;.

(d) The dollar amount of each separate loss or item of damage included in the total amount of the claim;.

(e) Copies of all documents related to the transaction from which the claim arose;.

(f) A statement of the status of any lawsuit regarding the claim and filed by the claimant against the ~~bonded~~ licensee, including the name of the case, case number, court and a copy of any judgment entered;.

(g) A description of the security interest, if any, held by the claimant including a copy of any security agreement related to the transaction from which the claim arose and a description of the secured property;.

(h) A description of any licenses held by the claimant, if the claimant is licensed under ch. 218, Stats.;

(i) A statement of whether the claimant is a retail customer, commercial customer, motor vehicle manufacturer, factory branch, factory representative, distributor, distributor representative, dealer, salesperson or a financial institution;

(j) A statement of whether the claimant is the ~~bonded~~ licensee, ~~his or her~~ the claimant's employer agent or employe.

**SECTION 32.** Trans 140.25 is amended to read:

**Trans 140.25(title) PAYMENT BY SURETY OR FINANCIAL INSTITUTION.**

(1) The surety or financial institution may, at any time, pay the amount of the bond or letter of credit to the department.

(2) The department shall hold all ~~surety~~ payments on a particular bond or letter of credit in a separate account. This separate account may be interest bearing. The department may retain interest earned, if any, but shall not otherwise make any charges against the bond or letter of credit for administering the bond or letter of credit and determining claims against it.

(3) If payment from the surety or financial institution is not received prior to, or during, the determination of claims by the department as provided in s. Trans 140.26, the department shall, after the final determination of timely claims, demand payment on the bond or letter of credit from the surety in an amount equal to the lesser of the face value of the bond or the aggregate total of the claims determined to be allowed. The surety or financial institution shall pay the amount demanded to the department within 30 days. The department may execute an appropriate written release for the surety or financial institution, if the surety or financial institution so requests, after payment is received.

(4) If a surety or financial institution fails to tender the amount of the bond or letter of credit to the state, or to make timely payment of the amount demanded as provided in sub. (3), or otherwise fails to observe the provisions of this chapter, then the department may, in addition to any other available remedy, revoke its acceptance of the surety or financial institution as adequate to provide any bond or letter of credit of any persons ~~bonded~~ secured under any statute or rule ~~administered~~ administered by the department. The department shall notify the surety company or financial institution of its intent to revoke its acceptance of the surety or financial institution. The surety company or financial institution may, within 30 days of such notice, request a hearing before the secretary or ~~his or her~~ the secretary's designee, prior to revocation of the department's acceptance of the surety or financial institution.

**SECTION 33.** Trans 140.26(1)(a), (2)(a), (b)1 to 5, (4)(b), (5)(a) to (c), (6) and (8) are amended to read:

**Trans 140.26(title) PROCEDURE FOR DETERMINATION OF CLAIMS AGAINST THE DEALER BOND OR LETTER OF CREDIT.** (1) PETITION FOR RULING. (a) Any claim made against the bond or letter of credit of a ~~bonded~~ licensee, any request by a surety for a department determination of a claim, any notification of the department by a ~~bonded~~ licensee of ~~his or her~~ the licensee's termination of business, any filing of a bankruptcy petition by a ~~bonded~~ licensee, or any payment of any part of a bond or letter of credit by the surety or financial institution to the department may be regarded by the department as a petition for declaratory ruling under s. ~~227.06~~ 227.41, Stats.

(b) If the petition does not initially comply with the required format of s. ~~227.06(2)~~ 227.41(2), Stats., the department may request that the additional materials needed to satisfy s. ~~227.06(2)~~ 227.41(2), Stats., be furnished.

(2) NOTICE OF PETITION. (a) The department shall provide notice to all interested parties by publishing notice, pursuant to s. ~~985.07(3)~~ 985.07(1), Stats., in a newspaper of general circulation in the area of the licensed address of the bonded licensee and by mailing notice to all interested parties known by the department.

(b) The notice required in par. (a) shall include:

1. The name of the bonded licensee;
2. The amount of the bond; or letter of credit.
3. The period of time covered by the bond; or letter of credit.
4. The deadline for the submission of claims against the bond; or letter of credit.
5. The address from which to request claims forms and to which to submit claims;

(4)(b) In determining the allowance, amount and priority class of a claim, the department shall give full faith and credit to applicable findings of fact and judgments entered by a court in an action involving the claim in which the claimant and the bonded licensee were opposing parties.

(5) DISPUTED CLAIMS. (a) Preliminary determination of claims. When a preliminary determination of all claims received prior to the deadline for filing claims is completed, the compilation of all those preliminary determinations shall be sent to each claimant, the surety, if any, and the bonded licensee, who shall all be parties to any hearing under sub. (6). The compilation of preliminary determination may include an estimate of the amount which would be paid on each claim, in accordance with s. Trans 140.23, if the preliminary determinations are not contested.

(b) Deadline for objection. Each claimant, the surety, if any, or the bonded licensee shall have 30 days from the date the preliminary determination is mailed to him or her



to object to the preliminary determination of the allowance, amount or priority class of any claim.

(c) Notice of objection. The party objecting to a preliminary determination shall furnish timely notice, pursuant to par. (b), of the grounds for ~~his or her~~ the party's objection to the department, the surety, if any, and the ~~bonded~~ licensee. If the preliminary determination objected to is of a claim by another claimant, timely notice of the grounds for the objection shall also be made by the objector to that claimant.

(6) HEARING ON CLAIMS. (a) If there is a dispute of a preliminary determination, a hearing shall be held before a hearing examiner appointed by the department. The claimant, surety, ~~bonded~~ licensee, and any party objecting to the preliminary determination of the claim may present evidence, including witnesses and argument.

(b) The hearing shall be scheduled for a date within 120 days of the ~~first~~ publication of the notice provided in sub. (2). The hearing may subsequently be rescheduled to another date, time or place at the discretion of the department and upon notice to all claimants, the ~~bonded-dealer~~ licensee and the surety, if any.

(8) FINAL DECISION AND PAYMENT. (a) The final decision of the department shall be in writing and sent to each claimant, the surety or financial institution and the ~~bonded~~ licensee. Payments from the bond, in accordance with the final decision shall not be made until at least 10 days after the final decision is sent to each party.

**SECTION 34.** Trans 140.27 is amended to read:

**Trans 140.27 LATE CLAIMS.** If any funds remain in a separate bond or credit account established under s. Trans 140.25 (2), or available under the remaining liability of the surety or financial institution after payment of all timely and allowed claims, the department may accept late claims for determination. After determining all claims

received prior to the third anniversary of the end of the period covered by the bond or letter of credit, and after appropriate payment to each claimant has been made, any remaining funds held by the department from the particular bond or letter of credit, excluding interest earned, shall be refunded to the surety or financial institution.

**SECTION 35.** Trans 140.28(1) is renumbered 140.28(intro.) and amended to read:

**Trans 140.28 ALTERNATIVE PROCEDURE FOR DETERMINATION OF CLAIMS.**

(intro.) At the discretion of the department, as an alternative to the procedures described in s. Trans 140.26 or 140.27, the department may proceed as necessary to allow any Wisconsin circuit court, or any federal court, having appropriate jurisdiction over any claim by any claimant against the ~~bonded~~ licensee, to hear the claims of all claimants known to the department, to determine the allowance, amount and priority class of each claim and to make awards against the bond or letter of credit in accordance with ss. Trans 140.21 to 140.23.

**SECTION 36.** Trans 140.28(2) is repealed.

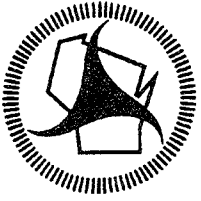
**(END OF RULE TEXT)**

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**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), Stats.

Signed at Madison, Wisconsin, this 11 day  
of January, 1996.

  
CHARLES H. THOMPSON  
Secretary  
Wisconsin Department of Transportation



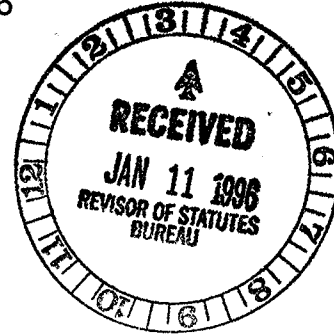
## Wisconsin Department of Transportation

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

OFFICE OF GENERAL COUNSEL  
P. O. Box 7910  
Madison, WI 53707-7910

January 11, 1996



Mr. Gary Poulson  
Deputy Revisor of Statutes  
131 West Wilson Street, Suite 800  
Madison, Wisconsin 53703

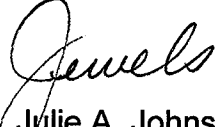
RE: **CLEARINGHOUSE RULE 95-087**

In the Matter of the Adoption of **TRANS 140**, Wisconsin Administrative Code, relating to the **security requirements for motor vehicle dealers and other licensees and the conditions under which financial statements may be required.**

Dear Mr. Poulson:

Enclosed for filing, pursuant to s. 227.20, Wis. Stats., is a certified copy of **CR 95-087**, an administrative rule relating to the above-mentioned matter. This rule is submitted by the Wisconsin Department of Transportation.

Sincerely,

  
Julie A. Johnson  
Paralegal

Enclosures

cc: Ann Agnew  
Dorothy Kapke  
Jim McDonnell  
Roger Cross  
Joan Loden



## Wisconsin Department of Transportation

Tommy G. Thompson  
Governor

Charles H. Thompson  
Secretary

OFFICE OF GENERAL COUNSEL  
P. O. Box 7910  
Madison, WI 53707-7910

The Honorable Senator Alan J. Lasee  
Chairman, Senate Transportation Committee  
Room 6 South, State Capitol  
Madison, Wisconsin 53702

December 18, 1995

**RE: Proposed Administrative Rule  
Chapter Trans 140, Wisconsin Administrative Code  
Clearinghouse Rule No. 95-087**

Dear Senator Lasee:

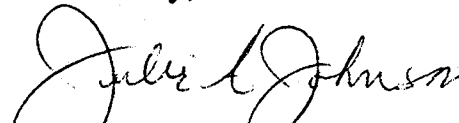
By letter of November 22, 1995, you requested to meet with the Department to discuss the above-mentioned administrative rule, relating to the security requirements for motor vehicle dealers and other licensees and the conditions under which financial statements may be required. Under s. 227.19(4)(b)1.a., Stats., this request extends the review period of the Senate Transportation, Agriculture and Local Affairs Committee by an additional 30 days, thereby expiring on December 22, 1995.

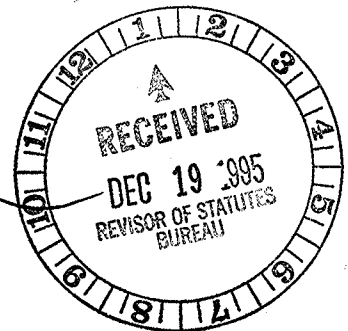
Assistant General Counsel Charles Kernats spoke with Mary Ann Gerrard of the Wisconsin Automobile and Truck Dealers Association (WATDA) on December 15. WATDA has reviewed the attached amendments and is satisfied with them. The Department understands that, since WATDA is satisfied with these amendments, there is no need to meet with you or your staff.

Accordingly, pursuant to § 227.19(4)(b)3, Stats., the Department proposes the germane modifications to this proposed rule as shown on the attached redlined version, pages 9-28. The preparation feature used shows the changes made by shading the new language and deleting the old language. Please replace pages 9-26 originally submitted with the attached replacement pages.

Thank you for your consideration of this proposal.

Sincerely,

  
Julie A. Johnson  
Paralegal



cc: Representative Brandemuehl/Senator Robert Welch/Representative Grothman/  
Gary Poulson/Joan Loden/Mary Ann Gerrard

less than \$5,000 nor more than \$100,000. The department may also require such securities of wholesalers and motor vehicle salespersons and applicants for such licenses. The department shall require such bonds according to the criteria described in s. Trans 140.027.

**Trans 140.027 CRITERIA FOR SUPPLEMENTAL SECURITY.** (1) AMOUNT. The department may require supplemental bonds of motor vehicle dealers or wholesalers according to their annual vehicle sales and their total points in the current licensing period. ~~The department shall provide a licensee or applicant written notice of the requirement for supplemental security.~~ The department may require supplemental securities of applicants for such licenses according to the department's estimates of their annual ~~retail~~ vehicle sales and their total points for the licensing period for which the application is made. The department may determine or estimate points and annual vehicle sales according to subs. (2) and (3). Bonds shall be in the amounts described in the following table:

Number of vehicles sold per year	Number of Points						
	0	1	2	3	4	5	6 or more
0-49	\$0	\$0	\$5,000	\$5,000	\$5,000	\$10,000	\$10,000
50-99	\$0	\$0	\$5,000	\$5,000	\$10,000	\$10,000	\$10,000
100-249	\$0	\$0	\$5,000	\$5,000	\$10,000	\$10,000	\$15,000
250-499	\$0	\$5,000	\$5,000	\$10,000	\$15,000	\$15,000	\$20,000
500-999	\$0	\$5,000	\$10,000	\$15,000	\$20,000	\$25,000	\$30,000
1,000-2,499	\$0	\$10,000	\$15,000	\$25,000	\$30,000	\$40,000	\$45,000
2,500 and above	\$0	\$15,000	\$35,000	\$50,000	\$65,000	\$85,000	\$100,000

**SUPPLEMENTAL BOND CALCULATION**

Number of points	1	2	3	4	5	6 or more
Number of vehicles sold at retail per year						
0-249	5,000	10,000	15,000	20,000	25,000	30,000 to 50,000
250-999	15,000	23,000	30,000	38,000	45,000	55,000 to 75,000
1,000 and above	25,000	35,000	45,000	55,000	65,000	75,000 to 100,000

(2) DETERMINING POINTS. (a) General. The department may assess points against a licensed dealer or wholesaler, or an applicant for a license, who has violated any provisions in s. 218.01, Stats., or rules interpreting s. 218.01, Stats., that constitute grounds for the suspension or revocation of their license. The department may also assess points against a licensed dealer, wholesaler, or an applicant for a license when the department has reasonable cause to doubt the licensee or applicant's financial responsibility or solvency. ~~The department shall provide a licensee or applicant written notice of a point assessment will occur when a written notice of the violation is issued by the department to the licensee or applicant.~~ Written notice of a point assessment shall specify the reasons for the point assessment, including the issuance of a complaint to revoke or suspend a license, a warning letter, ~~written request for a corrective plan of action or a written stipulation to a conditional license, notice of a civil forfeiture complaint~~ or citation, notice of denial of a license, and a special order issued by the division of hearings and appeals. All points assessed by the department shall remain in effect for

the duration of the current licensing period, and any new point assessments shall be added to the existing point total for that licensee throughout the current licensing period.

(b) Effect of point assessments from previous licensing period. The department may assess additional points or carry over points to a new licensing period under the following conditions:

1. The department may assess additional points for current violations when point assessments in previous licensing periods demonstrate a pattern of violations or repeat offenses.

2. The department may carry over point assessments from one licensing period to the next period for which a dealer or wholesaler makes application if a significant share of the licensee's or applicant's ownership or employees includes persons who were assessed points, or who were directly involved in violations causing points to be assessed, when they were last licensed by the department.

(c) Appeals to eliminate point accumulations. A licensee may, after 12 months of posting additional security, submit to the department evidence of eliminating the compliance or financial problems cited by the department when it assessed points, and ask that the department reduce or eliminate the licensee's current points. The licensee may submit only one request regarding the same point assessments during the licensing period.

(d) Point assessments. The department may assess points according to the following table:

Grounds for assessing points	No. of points per violation
Ss. 218.01(2)(a), (b), (bb), (h); (3)(a)7, 31; 342.06(2), 342.16(1m), 347.415, Stats.	4-6
Ss. 218.01 (3) (a) 4, 5, 6, 8, 9, 10, 11, 14, 18, 19, 25, Stats., where the department has estimated that the loss to the consumer was greater than \$500	4-6
Ss. 218.01 (3) (a) 4, 5, 6, 8, 9, 10, 11, 14, 18, 19, 25, Stats., where the department has estimated that the loss to the consumer was less than or equal to \$500	1-3
Other provisions of s. 218.01, Stats., not specifically listed in this table	1-3
S. 218.01 (3) (a) 1, Stats., where the department has found financial insolvency or irresponsibility as demonstrated by:	
Ratio of current assets to current liabilities is less than 1.25 but greater than or equal to 1.00	1-3
Total assets exceed total liabilities, but by less than 35 percent	1-3
Ratio of current assets to current liabilities is less than 1.00; or negative net worth	6
Other indications of financial insolvency or irresponsibility not specifically listed in the table	1-3

(3) DETERMINING ANNUAL VEHICLE SALES. For the purpose of using the table in sub. (1), the number of vehicles sold per year may be defined as any of the following:

(a) Total number of motor vehicles sold ~~at retail~~ during the previous 12 months from the date requested by the department, the most recent calendar year, the most recent fiscal year when the dealer had been licensed, or the most recent year represented on the licensee's application, at the discretion of the department.

(b) Projected number of motor vehicles to be sold ~~at retail~~ during the next 12 months, based on the business' most recent quarterly sales.

(c) Projected number of motor vehicles to be sold ~~at retail~~ during the next 12 months, based on the best information available to the department.

~~(4) APPEALS. If the department requires a licensee to obtain supplemental security under this section, and if the licensee is unable to obtain such security, the licensee may request that the additional security not be required until after the licensee~~



~~receives a hearing or employs any other procedures available to licensees under a revocation order, provided the licensee does all of the following:~~

~~(a) The licensee provides the department with 3 or more written statements from different surety companies or financial institutions stating that the licensee applied for the additional security requested by the department but was refused.~~

~~(b) The licensee provides evidence to the department demonstrating that it made good faith applications to each of the surety companies cited in par. (a).~~

~~(c) The licensee demonstrates to the department that the licensee is able to maintain the minimum security required under s. Trans 140.022(2).~~

~~(4) APPEALS. (a) A person adversely affected by any of the following actions may request an informal hearing from the department before the action becomes effective:~~

~~1. The issuance of written notice assessing points under this section.~~

~~2. The issuance of written notice requiring supplemental security under this section.~~

~~(b) A request for informal hearing on an action under par. (a) shall be made in writing and shall be filed with the department within 10 days after the licensee or applicant receives notice of the department's action.~~

~~(c) If the department receives a written request for an informal hearing, the department shall conduct a prompt informal hearing before a department employee or official who was not personally involved in the investigation or decision to take the action, and who has the authority to withdraw, modify or correct the action as necessary. The informal hearing shall be conducted within 10 business days after a request for informal hearing is received by the department, unless the person requesting the informal hearing~~

agrees to a later date. An informal hearing may be conducted by telephone or at the department's offices.

(d) Within 5 business days after the conclusion of an informal hearing, the department shall issue a brief written memorandum which summarizes the informal hearing, and any decision or action resulting from the informal hearing. A copy of this memorandum shall be provided to the person requesting the informal hearing.

(e) The department's decision is final, and no further appeals may be submitted or considered.

**NOTE:** If the department initiates an action to deny, suspend, or revoke a license because of failure to obtain supplemental security, the affected licensee or applicant is entitled to a full evidentiary hearing before the division of hearings and appeals, pursuant to s. 218.01 and ch. 227, Stats.

**Trans 140.028 WHEN FINANCIAL INFORMATION IS REQUIRED.** (1) The department may require a motor vehicle dealer or any other business licensed under ch. 218, Stats., or any applicant for such licenses, to submit information relating to its financial standing, solvency, or responsibility under any one of the following circumstances:

(a) The department has reasonable cause to doubt the financial responsibility of the applicant or licensee.

(b) The department has reasonable cause to doubt the applicant or licensee's compliance with ch. 218, Stats., or its related rules, where the violation constitutes grounds for suspension or revocation of a license. 'Reasonable cause' includes a situation in which the licensee, applicant or employes of the licensee or applicant have been found by the department to have violated ch. 218, Stats., or rules interpreting ch. 218, Stats., anytime during the current or the immediately previous licensing period.

(c) The applicant or licensee is a motor vehicle salvage dealer that has not supplied a bond per s. 218.21(4)(a), Stats., under the conditions specified in s. 218.01(2)(h)2, Stats.

(d) The applicant or licensee is a recreational vehicle dealer.

(e) The applicant or licensee is a wholesaler.

(f) The applicant or licensee is a moped dealer.

(2) Failure to provide the financial information required under sub. (1) shall be grounds for denial or revocation of the license.

**NOTE:** Provisions for protection of trade secrets are found in ss. 19.36(5), 134.90(1)(c) and 218.01(2)(h)3, Stats.

**SECTION 17.** Trans 140.03(1)(intro.), (e) and (g) are amended to read:

**Trans 140.03 BALANCE SHEET INFORMATION.** (1)(intro.) All license if required by the department, licensees or applicants shall submit a balance sheet dated not more than 90 days prior to the date of application submission, that is prepared in accordance with generally accepted accounting principles. A small business as defined in s. ~~277.016~~ 227.114, Stats., which does no interim financial reporting may submit a balance sheet from the close of the business' most recent fiscal year. The balance sheet shall contain the following:

(e) The name of any ~~bank or~~ financial institution used by the applicant.

(g) A schedule of ~~all~~ real property held, its fair market value, book value and the amount and terms of any indebtedness.

**SECTION 18.** Trans 140.05 (2) is amended to read:

Trans 140.05 (2) **RATIO ANALYSIS.** A ratio analysis comparing current liabilities with current assets shall be used to evaluate a dealer's financial potential. Current

liabilities which exceed current assets ~~shall~~ may be grounds for the denial, suspension or revocation of a dealer's license. ~~An exception to this section will be when the current ratio is less than 1 to 1 solely due to the manner the dealership has chosen to account for leasing operations.~~

**SECTION 19.** Trans 140.09(2)(a) is repealed and recreated to read:

Trans 140.09(2) ACCEPTABLE NET WORTH. (a) The following guidelines are used in determining the acceptable level of net worth of an applicant:

Dealer Type

New Auto or Truck	\$25,000 bond or letter of credit required
Used Auto or Truck	\$25,000 bond or letter of credit required
Motorcycle and not other motor vehicles	\$5,000 bond or letter of credit required
Motorcycle and other motor vehicles	\$25,000 bond or letter of credit required
Recreational Vehicle	Minimum required ratio of total assets to total liabilities of 1.4
Moped	Minimum required ratio of total assets to total liabilities of 1.4
Motor Vehicle Wholesaler	Minimum required ratio of total assets to total liabilities of 1.4
Motor Vehicle Salvage	Minimum net worth of \$5,000

**SECTION 20.** Trans 140.10 is repealed.

**SECTION 21.** Trans 140.20(1) is repealed.

**SECTION 22.** Trans 140.20(1m) is renumbered Trans 140.20(1) and amended to read:

Trans 140.20(1) A ~~"claim arose"~~ "Claim arose against the bond or letter of credit of a bonded licensee licensee" when means a situation in which a cause of action has accrued against the bonded licensee accrued. Unless otherwise provided by statute, a

cause of action accrues where there exists a claim capable of present enforcement, a suable party against whom it may be enforced, and a party who has a present right to enforce it. A tort claim accrues when the injury is discovered or reasonably should have been discovered.

**SECTION 23.** Trans 140.20(2) and (7m) are amended to read:

Trans 140.20(2) "Commercial customer" means a private person who buys or agrees to buy one or more motor vehicles from the ~~bonded~~ licensee for the person's business or commercial use. A private person who sells, trades, or consigns to the ~~bonded~~ licensee a motor vehicle used by the person primarily for business or commercial purposes is also a commercial customer.

(7m) The "period covered by the ~~bond~~ security" is co-extensive with the ~~annual calendar year~~ biennial license, issued under ch. 218, Stats., which is conditioned on providing the ~~surety bond~~ security in question. If the ~~annual~~ biennial license is extended by operation of s. ~~227.14(2)~~ 227.51(2), Stats., the period covered by the ~~bond~~ security also is extended and remains co-extensive unless sooner cancelled by the surety. ~~The beginning date shall be January 1, unless the standard bond form filed with department expressly states otherwise. The ending date shall be the earlier of: a) December 31 of the license year, or b) the expressly stated ending date on the filed bond form, or c) the effective date of cancellation of the bond as provided on the standard bond form. If the bond form filed with the department provides for automatic renewal of the surety coverage or states that a period of more than the calendar year is covered, the beginning date shall be January 1 annually and the ending date shall be December 31 annually, until the express ending date or cancellation date is reached.~~

NOTE: ~~The bond forms~~ Forms for bonds and letters of credit are available from the Dealer License Section, Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707-7909.

**SECTION 24.** Trans 140.21(1)(a) to (c)4 are amended to read:

Trans 140.21(1)(a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant;.

(b) The claim arose during the period covered by the ~~bond~~ security; and;.

(c) The claimant's loss shall be caused by an act of the ~~bonded~~ licensee, or his or her the claimant's agents or employes, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a ~~bonded~~ secured salesperson or motor vehicle dealer, pursuant to s. 218.01 (3) (a) 1 to 14, 18 to 21, 25 or 27 to 31, Stats.;

2. A ~~mobile-home~~ recreational vehicle dealer license, in the case of a bonded ~~mobile-home~~ recreational vehicle dealer, pursuant to s. 218.11 (6), Stats.;

3. A salvage dealer license, in the case of a bonded salvage dealer, pursuant to s. 218.22 (3), Stats.;

4. An auction dealer license, in the case of a bonded auction dealer, pursuant to s. 218.32 (3), Stats.;

**SECTION 25.** Trans 140.21(1)(c)5 is repealed.

**SECTION 26.** Trans 140.21(1)(c)6 is renumbered 140.21(1)(c)5.

**SECTION 27.** Trans 140.21(1)(d), (2)(a) to (e), (3) and (5)(a) to (b)2 are amended to read:

Trans 140.21(1)(d) The claim must be made within 3 years of the last day of the period covered by the ~~bond~~ security. The department shall not approve or accept any

surety bond or letter of credit which provides for a lesser period of ~~surety liability~~ protection.

**NOTE:** This paragraph does not ~~supersede~~ supersede any applicable provision of ch. 893, Stats., and does not limit the liability of the ~~bonded~~ licensee in any way.

(2)(a) Any claim by a claimant licensed under ch. 218, Stats., or required to be so licensed, ~~whose claim arises, in whole or in part, from a transaction in which the claimant violated any provision of ch. 218, Stats., or rules adopted thereunder, or which included an act of the claimant which is grounds for suspension or revocation of the claimant's license issued under ch. 218, Stats., as determined by the department;~~

(b) Any claim by the ~~bonded~~ licensee, ~~his or her~~ the licensee's employing dealer, if any, or ~~his or her~~ the licensee's agents, partners, stockholders or employees;

(c) Any claim arising from activities of the ~~bonded~~ licensee which are not regulated by the department under ch. 218, Stats., specifically including, without limitation, claims for rent, mortgage payments, wages, commissions, personal services rendered and commercial transactions not directly related to the sale or purchase of a motor vehicle;

(d) Any claim by manufacturer, factory branch, factory representative, distributor or distributor representative involving the sale or delivery of a new motor vehicle to the ~~bonded~~ licensee;

(e) Any claim for interest, ~~finance charges~~ or penalties, legal costs, attorney fees, or punitive damages except as otherwise expressly provided in sub. (5); ~~or~~.

(3) ~~The~~ Any of the following acts by a claimant, as determined by the department, may be grounds for disallowing a claim:

(a) Making or offering a false statement, false or altered document, or other misrepresentation in support of a claim against the ~~bond~~; security.

(b) Making a claim based in whole or in part upon a transaction or an act by the claimant which is unlawful or contrary to statute, regulation or administrative rule, as determined by the department;

(c) Failing to make a claim in the manner provided by this subchapter;

(d) Failure of the claimant to cooperate in the investigation of ~~his or her~~ the claimant's claim, including failure to provide additional supporting documentation or evidence for a claim or to provide other explanatory materials when that information is requested by the department and is readily available to, or known to, the claimant or is in the claimant's possession or control.

(5)(a) When a claimant is unable to obtain title to a motor vehicle because the ~~bonded~~ licensee who held the vehicle for sale created a security interest in the motor vehicle and a manufacturer or financial institution is holding the title or Manufacturers ~~Statement~~ Certificate of Origin (~~MSO~~) (MCO) to ensure payment by the ~~bonded~~ licensee at the time of sale, the claimant's reasonable expenses, including legal costs and attorney fees, in obtaining requisite title documentation, are allowable claims against the ~~bond~~ security of the ~~bonded~~ licensee.

(b) As alternatives to making the claim described in par. (a), a claimant in such a case may instead do any of the following:

1. Rescind the purchase contract and make a claim against the ~~bond~~ security of the ~~bonded~~ licensee for the full purchase price of the vehicle;

2. Make a claim against the ~~bond~~ security of the ~~bonded~~ licensee for the cost of a title bond prescribed by s. 342.12 (3) (b), Stats.;

**SECTION 28.** Trans 140.22(intro.), (1)(title), (intro.), (a) and (b), (2)(title), (intro.) and (b) are amended to read:



**Trans 140.22 PRIORITY OF CLAIMS.** Allowable claims against the bond security

shall be assigned to one of the following priority classes:

(1)(title) SALESPERSON, MOTOR VEHICLE AND RECREATIONAL VEHICLE DEALER SECURITIES. The priority classes of allowable claims against the bond security of any bonded licensee except a wholesaler, salvage or auction dealer, in order of their priority, are as follows:

(a) Claims of retail customers including, without limitation, claims arising from a particular motor vehicle purchase from the bonded licensee or from a particular motor vehicle sale to by the bonded licensee, claims for repairs warranted by the bonded licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the bonded licensee to pay the claimant for a trade-in, a motor vehicle purchased by the bonded licensee, or a consigned vehicle not returned to the consignor upon request.

(b) Claims of commercial customers including, without limitation, claims arising from a particular motor vehicle purchase from the bonded licensee or from a particular motor vehicle sale to by the bonded licensee, claims for repairs warranted by the bonded licensee, claims for failure to furnish title to a motor vehicle, claims for deposits against an uncompleted motor vehicle purchase transaction, and claims for the failure of the bonded licensee to pay the claimant for a trade-in, a motor vehicle purchased by the bonded licensee, or a consigned vehicle not returned to the consignor upon request.

(2)(title) WHOLESALER, SALVAGE AND AUCTION DEALER BONDS. (intro.) The priority classes of allowable claims against a wholesaler bond, a salvage dealer bond or an auction dealer bond, in order of their priority, are as follows:

(b) All other allowable claims, including claims of the department for title and registration fees and ~~of the department of revenue for income taxes due from the bonded licensee as a result of filing a materially false or fraudulent income tax return as certified by the department of revenue.~~

**SECTION 29.** Trans 140.22(1)(d) to (f) are repealed.

**SECTION 30.** Trans 140.23(1)(a) to (c) and (3) are amended to read:

Trans 140.23(1)(a) The total amount necessary to pay all claims of the class in full shall be determined;

(b) If enough funds are available under the bond or letter of credit to do so, all claims of the class shall be paid in full;

(c) If, after all allowed claims of a class have been paid in full, funds remain available to pay additional claims, the allowed claims of the next priority class shall be paid, in accordance with ~~par.~~ pars. (a) through (d).

(3) The aggregate total of all payments on all claims may not exceed the total amount of the bond or letter of credit available for payment of claims.

**SECTION 31.** Trans 140.24(1)(intro.) and (a) to (j) are amended to read:

Trans 140.24(1)(intro.) Each claim shall be in writing and shall include all of the following:

(a) The name and address of the claimant and a telephone number where the claimant can be reached during normal business hours;

(b) A description of the nature of the claim and the transaction from which the claim arose, including any specific acts of the ~~bonded~~ dealer which are grounds for suspension or revocation of the ~~bonded~~ dealer's license under ch. 218, Stats.;

(c) The date on which the claim arose;

(d) The dollar amount of each separate loss or item of damage included in the total amount of the claim;.

(e) Copies of all documents related to the transaction from which the claim arose;.

(f) A statement of the status of any lawsuit regarding the claim and filed by the claimant against the bonded licensee, including the name of the case, case number, court and a copy of any judgment entered;.

(g) A description of the security interest, if any, held by the claimant including a copy of any security agreement related to the transaction from which the claim arose and a description of the secured property;.

(h) A description of any licenses held by the claimant, if the claimant is licensed under ch. 218, Stats.;.

(i) A statement of whether the claimant is a retail customer, commercial customer, motor vehicle manufacturer, factory branch, factory representative, distributor, distributor representative, dealer, salesperson or a financial institution;.

(j) A statement of whether the claimant is the bonded licensee, ~~his or her~~ the claimant's employer agent or employe.

**SECTION 32.** Trans 140.25 is amended to read:

**Trans 140.25(title) PAYMENT BY SURETY OR FINANCIAL INSTITUTION.**

(1) The surety or financial institution may, at any time, pay the amount of the bond or letter of credit to the department.

(2) The department shall hold all surety payments on a particular bond or letter of credit in a separate account. This separate account may be interest bearing. The department may retain interest earned, if any, but shall not otherwise make any charges

against the bond or letter of credit for administering the bond or letter of credit and determining claims against it.

(3) If payment from the surety or financial institution is not received prior to, or during, the determination of claims by the department as provided in s. Trans 140.26, the department shall, after the final determination of timely claims, demand payment on the bond or letter of credit from the surety in an amount equal to the lesser of the face value of the bond or the aggregate total of the claims determined to be allowed. The surety or financial institution shall pay the amount demanded to the department within 30 days. The department may execute an appropriate written release for the surety or financial institution, if the surety or financial institution so requests, after payment is received.

(4) If a surety or financial institution fails to tender the amount of the bond or letter of credit to the state, or to make timely payment of the amount demanded as provided in sub. (3), or otherwise fails to observe the provisions of this chapter, then the department may, in addition to any other available remedy, revoke its acceptance of the surety or financial institution as adequate to provide any bond or letter of credit of any persons ~~bonded~~ secured under any statute or rule ~~adminstered~~ administered by the department. The department shall notify the surety company or financial institution of its intent to revoke its acceptance of the surety or financial institution. The surety company or financial institution may, within 30 days of such notice, request a hearing before the secretary or ~~his or her~~ the secretary's designee, prior to revocation of the department's acceptance of the surety or financial institution.

**SECTION 33.** Trans 140.26(1)(a), (2)(a), (b)1 to 5, (4)(b), (5)(a) to (c), (6) and (8) are amended to read:

**Trans 140.26(title) PROCEDURE FOR DETERMINATION OF CLAIMS AGAINST**

**THE DEALER BOND OR LETTER OF CREDIT.** (1) PETITION FOR RULING. (a) Any claim made against the bond or letter of credit of a ~~bonded~~ licensee, any request by a surety for a department determination of a claim, any notification of the department by a ~~bonded~~ licensee of ~~his or her~~ the licensee's termination of business, any filing of a bankruptcy petition by a ~~bonded~~ licensee, or any payment of any part of a bond or letter of credit by the surety or financial institution to the department may be regarded by the department as a petition for declaratory ruling under s. ~~227.06~~ 227.41, Stats.

(b) If the petition does not initially comply with the required format of s. ~~227.06(2)~~ 227.41(2), Stats., the department may request that the additional materials needed to satisfy s. ~~227.06(2)~~ 227.41(2), Stats., be furnished.

(2) NOTICE OF PETITION. (a) The department shall provide notice to all interested parties by publishing notice, pursuant to s. ~~985.07(3)~~ 985.07(1), Stats., in a newspaper of general circulation in the area of the licensed address of the ~~bonded~~ licensee and by mailing notice to all interested parties known by the department.

(b) The notice required in par. (a) shall include:

1. The name of the ~~bonded~~ licensee;.
2. The amount of the bond; or letter of credit.
3. The period of time covered by the bond; or letter of credit.
4. The deadline for the submission of claims against the bond; or letter of credit.
5. The address from which to request claims forms and to which to submit claims;.

(4)(b) In determining the allowance, amount and priority class of a claim, the department shall give full faith and credit to applicable findings of fact and judgments

entered by a court in an action involving the claim in which the claimant and the bonded licensee were opposing parties.

(5) DISPUTED CLAIMS. (a) Preliminary determination of claims. When a preliminary determination of all claims received prior to the deadline for filing claims is completed, the compilation of all those preliminary determinations shall be sent to each claimant, the surety, if any, and the bonded licensee, who shall all be parties to any hearing under sub. (6). The compilation of preliminary determination may include an estimate of the amount which would be paid on each claim, in accordance with s. Trans 140.23, if the preliminary determinations are not contested.

(b) Deadline for objection. Each claimant, the surety, if any, or the bonded licensee shall have 30 days from the date the preliminary determination is mailed to him or her to object to the preliminary determination of the allowance, amount or priority class of any claim.

(c) Notice of objection. The party objecting to a preliminary determination shall furnish timely notice, pursuant to par. (b), of the grounds for ~~his or her~~ the party's objection to the department, the surety, if any, and the bonded licensee. If the preliminary determination objected to is of a claim by another claimant, timely notice of the grounds for the objection shall also be made by the objector to that claimant.

(6) HEARING ON CLAIMS. (a) If there is a dispute of a preliminary determination, a hearing shall be held before a hearing examiner appointed by the department. The claimant, surety, bonded licensee, and any party objecting to the preliminary determination of the claim may present evidence, including witnesses and argument.

(b) The hearing shall be scheduled for a date within 120 days of the first publication of the notice provided in sub. (2). The hearing may subsequently be rescheduled to

another date, time or place at the discretion of the department and upon notice to all claimants, the ~~bonded dealer~~ licensee and the surety, if any.

(8) FINAL DECISION AND PAYMENT. (a) The final decision of the department shall be in writing and sent to each claimant, the surety or financial institution and the ~~bonded~~ licensee. Payments from the bond, in accordance with the final decision shall not be made until at least 10 days after the final decision is sent to each party.

**SECTION 34.** Trans 140.27 is amended to read:

**Trans 140.27 LATE CLAIMS.** If any funds remain in a separate bond or credit account established under s. Trans 140.25 (2), or available under the remaining liability of the surety or financial institution after payment of all timely and allowed claims, the department may accept late claims for determination. After determining all claims received prior to the third anniversary of the end of the period covered by the bond or letter of credit, and after appropriate payment to each claimant has been made, any remaining funds held by the department from the particular bond or letter of credit, excluding interest earned, shall be refunded to the surety or financial institution.

**SECTION 35.** Trans 140.28(1) is renumbered 140.28(intro.) and amended to read:

**Trans 140.28 ALTERNATIVE PROCEDURE FOR DETERMINATION OF CLAIMS.**

(intro.) At the discretion of the department, as an alternative to the procedures described in s. Trans 140.26 or 140.27, the department may proceed as necessary to allow any Wisconsin circuit court, or any federal court, having appropriate jurisdiction over any claim by any claimant against the ~~bonded~~ licensee, to hear the claims of all claimants known to the department, to determine the allowance, amount and priority class of each claim and to make awards against the bond or letter of credit in accordance with ss. Trans 140.21 to 140.23.

**SECTION 36.** Trans 140.28(2) is repealed.

**(END OF RULE TEXT)**

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