

The Wisconsin Department of Transportation adopts an order to renumber TRANS 138.04(1)(b)1. to 7. and 139.07; renumber and amend TRANS 138.04(1)(b)1.g. and (g); amend TRANS 138.02(10), 138.04(intro.), (1)(intro.), (a), (b)(intro.), (e) and (2), 138.05(5), 138.08(2), 139.02(11) and (19), 139.04(4), (6)(a)(intro.) and (c)(intro.), 139.05(1)(a), (2)(f), (i), (j), (5)(b)3., (6), (10) and (11), 139.06(intro.) and (10); repeal and recreate TRANS 139.05(2)(g); and create TRANS 138.01(2m), 138.02(2m), (5g), (5r) and (6m), 138.03(6), 138.04(1)(b)2., (c)(title), (d)(title), (f)(title) and (h)(title), 139.01(3), 139.02(3m), (6m), (9r), (10g) and (10r), 139.04(6)(d), 139.05(1)(a)1. and 2., (2)(jm) and (jr), (6m), (8g), (8r) and (11m), 139.055, 139.06(10)(b) to (e), 139.07 and 139.08, relating to dealer facilities, records and licenses; and motor vehicle trade practices

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

STATUTORY AUTHORITY: ss. 85.16(1), 110.06, 218.01(5), 227.11(2), Stats.

STATUTES INTERPRETED: ss. 218.01(1)(e), 218.01(1)(n), 218.01(2)(d)1., 218.01(2a), 218.01(3)(a) 6., 9., 14., 18., 19., 22. and 30., 218.01(3)(bf), 218.01(7a), 218.30, 218.32(2) and (4)(c), 227.51(2), 341.51(3), 342.16(2), Stats.

General Summary of Rule. Chapters Trans 138 and 139 regulate the conduct of motor vehicle dealers, salespeople, and other licensees in Wisconsin and provide protection for consumers from unfair trade practices. The rule amends these regulations to incorporate some new consumer protections and some changes requested by the motor vehicle dealer industry intended to facilitate commerce.

A detailed description of all changes is given in the Statement of Scope for this rule making, published in the 11-1-98 Wisconsin Administrative Register. The following are the changes:

1. Current law permits a motor vehicle dealer to sell a car as a “new” vehicle only so long as it has not been operated more than 100 miles. If the actual mileage is disclosed to the buyer, the car may be sold as “new” so long as it is not operated more than 500 miles. This rule making changes to allow a vehicle to be sold as “new” regardless of how many of miles the vehicle is driven for manufacturer tests, pre-delivery test, dealer exchange or delivery. In addition, the vehicle may be driven up to 200 miles for any other purpose, such as test drives.

2. Define “pay-off” to mean the outstanding balance of any lien secured by a vehicle to be used as a trade-in or the amount the owner would be required to pay a creditor to terminate the lease and transfer lessee title to the vehicle.

3. Amend current s. Trans 138.02(10) definition of “sell” a motor vehicle, to clarify that a transaction that involves an out-of-state person negotiating a sales contract with a person within this state via remote communications mechanisms such as the telephone or internet, and subsequently delivering the vehicle to a consumer in Wisconsin is considered a “sale” in Wisconsin. The change clarifies that persons who negotiate sales with Wisconsin residents and deliver vehicles to them within this state are subject to state regulation.

4. Create s. Trans 138.03(6) to exempt out-of-state sellers who negotiate vehicle purchase orders placed from within Wisconsin and who deliver vehicles to retail consumers in Wisconsin from the requirement that they maintain business facilities within this state, so long as the seller makes its sales records available to the department for inspection.

5. Modify used motor vehicle disclosure requirements applicable to motorcycles. The Department proposes to exempt motorcycle dealers from the requirement of displaying the Wisconsin Buyer’s Guide (Used Motor Vehicle Disclosure) label on the motorcycle. Customers would have to be provided with an opportunity to review the Wisconsin Buyer’s Guide prior to entering into a contract to purchase a motorcycle. This provision was requested by motorcycle dealers who believe that the labels disintegrate on motorcycles when exposed to the weather.

6. Require dealers who sell vehicles on consignment to protect the people who consign their vehicles. Vehicles purchased by the consignor for personal, family or household purposes remain the property of the consignor upon consignment under current law. Vehicles purchased for other reasons become the property of the dealer and the consignor’s interest is reduced to a lienhold interest. This rule making requires that the dealer file a U.C.C. financing statement securing the consignor’s interest in the vehicle when the consignor did not purchase the vehicle for personal, family or household purposes. Absent a U.C.C. filing, the consignee’s interest in the vehicle would be subject to claims from other creditors or a bankruptcy trustee.

7. Clarify that a dealer may accept a subsequent offer on a vehicle when an accepted offer is already pending, and specify required disclosures to the consumer whose offer is subject to an earlier pending offer.

8. Clarify that there are two allowed methods for dealers to document changes to the motor vehicle purchase contract after the dealer has accepted the offer: change the contract and initial all changes, or write a new contract from scratch and disclose all changes orally to the buyer.

9. Amend s. Trans 138.05(5) to give the auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase.

10. Restrict misleading consumer loan application practices made possible by artificial adjustments to the price of a vehicle.

11. Permit dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document that itemizes the components of that price.

12. Regulate adjustments to the amount due on delivery when a lien pay-off or lease buy-out is an estimate. Provide that the consumer may rescind the contract if the payoff exceeds the estimate in the contract by more than 1 payment on the note secured by the vehicle. Clarifies that the dealer must disclose any difference between the estimated and actual loan payoff and that it is not bushing for a dealer to change the contract price to reflect the actual payoff amount.

13. Allow a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery.

14. Require dealers to pay off loans on a trade-in vehicle within 14 days of acquiring the vehicle.

15. Make the penalty warning more apparent to the consumer by moving it next to the contract signature block.

16. Require a dealer to either (a) cancel a purchase contract within 14 days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or (b) be bound to delivery of the vehicle on those terms.

17. Permit the parties to specify by contract the time period the a dealer must wait for a consumer to accept or reject proposed credit terms before the contract is considered rescinded.

18. Current law prohibits the sale of a vehicle as “new” if it has been has been damaged to the extent of more than 6% of its value when that equipment is replaced with identical manufacturer’s original equipment, excluding repairs to glass, tires or bumpers. This rule making amends the law to also exclude damage to audio equipment and molding when making this calculation.

19. Clarify that a dealer may complete a purchase contract for a vehicle without inspecting the vehicle and making used vehicle disclosures if the vehicle is exempt by rule from inspection and disclosure requirements.

20. This rule making changes the term “service agreement” throughout Ch. Trans 138 and 139 to “service contract”. No substantive change is intended by this change of terms. Similarly, s. Trans 138.08(2) is amended to replace the phrase “shall not” with “may not” which is the preferred means of expressing a prohibition in statute or administrative rule. No substantive change is intended.

21. Restore several warranty disclosure requirements to the rule which were inadvertently removed from the rule in a previous amendment. This rule making

reestablishes the law that a dealer who misinforms a buyer about the existence of a warranty is responsible for providing the warranty promised.

Final Regulatory Flexibility Analysis. This rule will have little net effect on small businesses. On the one hand, business activities of dealers are improved by some streamlined requirements; on the other hand, disclosures of sales practices are required to provide adequate consumer protection. Specifically:

1. Amendments that clarify that out-of-state dealers who negotiate sales with Wisconsin residents in Wisconsin and deliver the vehicles in this state are subject to Wisconsin dealer licensing requirements will impact small businesses. Small business dealerships in other jurisdictions will be *required to become licensed in Wisconsin and follow Wisconsin reporting and trade practice law for sales in Wisconsin. Small dealer businesses in Wisconsin will be affected in that they will be competing on equal regulatory ground with dealers from other jurisdictions that initiate, negotiate and conclude sales in Wisconsin but whose offices are outside the state boundaries.*

2. Changing the definition of a “new” vehicle to allow any number of miles for manufacturer tests, pre-delivery test, dealer exchange or delivery, plus up to 200 miles for any other purpose (including the purchasing consumer’s test drive) will impact small businesses. *This change will require dealers to keep track of reasons for which each new car on its lot is driven and the number of miles driven. It will, however, enable those dealers to sell as “new” some vehicles which prior law would have required be sold as “used.”*

3. Exempting motorcycles from the requirement of displaying the Wisconsin Buyer’s Guide label on the motorcycle will impact small businesses. *This provision will reduce small business costs associated with protecting and/or replacing labels as is required under current law; however, requiring that the label be shown or provided to the consumer before a contract becomes binding creates a new function for businesses not displaying the label on the vehicle to perform. The dealer community, however, has asked for this change in law.*

4. Requiring U.C.C. financing statements be filed when a dealer takes a car on consignment purchased by the consignor for purposes other than personal, family or household purposes does impact small businesses. The law imposes a burden of filing U.C.C. financing statements on dealers. Conversely, it protects small business owners who consign vehicles for sale through dealers. Because the law exempts vehicles purchased by the consignor for personal, household or family purposes, and the department believes most consignment vehicles will fall into that category, the department believes the impact of this rule change will be minimal.

5. Permitting dealers to accept a more than one offer to purchase a vehicle when an accepted offer is already pending, and to specify required disclosures to the consumer whose offer is subject to an earlier pending offer will impact small business dealers. *This provision will allow dealers more flexibility in structuring transactions. Moreover, it provides a regulatory framework that protects consumers from a practice that is already widespread by requiring dealers to provide clear disclosure to consumers as to the status of their offers.*

6. Permitting dealers to print a new contract to replace one when amendments are being made *will save time for small businesses by allowing dealers to print out a new computer generated copy of a contract rather than having to handwrite in multiple contract changes.*

7. Giving auctions 14 rather than 12 days to provide clear title before a dealer can rescind a purchase *will ease administrative burdens on small business auctions.*

8. Prohibiting misleading consumer loan application practices made possible by artificial adjustments to the price of a vehicle *will require dealers to specify true prices and discounts on the purchase contract. This will protect consumers from misleading consumer loan practices, will help dealers by assuring that the vehicle loan will more likely be made and the purchase will close, and does not create a regulatory burden on small business.*

9. Permitting dealers to provide a total cash price for a vehicle on the face of the motor vehicle purchase contract and to incorporate by reference a computer printout or other document, signed by the buyer that itemizes the components of that price *will reduce dealer paperwork while providing the same consumer protection. Therefore this change will reduce regulatory burdens on small business dealers.*

10. Regulating adjustments to the amount due on delivery when a lien pay-off is an estimate *will protect consumers from contract obligations that they cannot meet, while providing dealers with a mechanism to close a sale when exact payoff amounts are unknown. This will reduce regulatory burdens on small business dealers.*

11. Allowing a consumer to rescind a contract without penalty when a rebate conditioned on consumer or vehicle eligibility is unavailable at the time of delivery. *This provision provides necessary consumer protections for sales involving rebates and does not increase regulatory burdens on small business dealers.*

12. Requiring dealers to pay off loans on a trade-in vehicle within 14 days of acquiring the vehicle *protects consumers from overdue fees and penalties that accrue if a loan is not promptly paid off and does not create a regulatory burden on small business dealers.*

13. Requiring a dealer either (a) to cancel a purchase contract within 7 days of its execution if the credit terms disclosed in the contract cannot be obtained for the customer or (b) be bound to delivery of the vehicle on those terms will result in dealers occasionally having to finance vehicle purchases. It is balanced, however, against the fact that until the contract is cancelled, the buyer cannot contract to purchase a different car just in case the dealer does decide to finance their purchase of the original vehicle. This provision requires the dealer to make a decision on financing for the vehicle promptly and to advise the consumer of that decision. While it may create a burden on small dealerships that miss the deadline, it will protect other small businesses that contract to purchase vehicles from dealers and who are not provided with an answer as to financing availability promptly.

14. Specifying time periods a dealer must wait for a consumer to accept or reject proposed credit terms, should be a benefit to small business dealers by *dealer cost situation by removing uncertainty as to purchase consummation.*

15. To clarifying that a dealer may cancel a purchase contract by a date specified in the contract if the contract is subject to the consumer obtaining acceptable financing of the consumer's choice, and the consumer does not notify the dealer in writing that financing has been secured will eliminate a regulatory burden in current law. *This provision reduces dealer uncertainty as to whether a sale will close. To protect all parties, the change in law requires dealers and consumers to agree in contract to a date.*

16. Excluding audio equipment and molding damage when calculating whether a new vehicle has been damaged to the extent of more than 6% of its value when that equipment is replaced with identical manufacturer's original equipment will not impact small businesses.

17. Clarifying that a dealer may complete a purchase contract for a vehicle without inspecting the vehicle and disclosing its defects if the dealer is not required to inspect the vehicle or provide a disclosure *reduces small business dealer costs without impacting consumer protection to consumers.*

18. Restoring warranty disclosure requirements to the rule will restore a provision of law that was inadvertently removed from the administrative code. *This provision will not impact small business dealers because it does not reflect a change in dealer practices or enforcement.*

With regard to each policy change described above that may increase burdens on small businesses, the Department has considered establishing less stringent compliance or reporting requirements, less stringent schedules, consolidation or simplification of reporting requirements, and exempting small businesses. The Department believes that it is of paramount importance that consumer protections remain the same among motor vehicle dealers regardless of the size of the dealership. Exempting small dealerships from consumer protection laws would invite abuse by small dealers.

Fiscal Effect. This rule will have no fiscal impact on the Department or the Transportation Fund. No fiscal impact on local governments is anticipated.

Copies of Rule. Copies of the rule may be obtained upon request, without cost, by writing to Cathy Skaar, Policy Analyst, Department of Transportation, Dealer Licensing Section, Room 806, P. O. Box 7909, Madison, WI 53707-7909 or by calling (608) 267-3635. Copies may also be viewed and printed at the following website: **www.watda.org/links/trans139**. Hearing-impaired individuals may contact the Department using TDD (608) 266-3096. Alternate formats of the rule will be provided to individuals at their request.

TEXT OF RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 110.06, 218.01(5), 227.11(2), Stats., the department of transportation hereby amends rules interpreting ss. 218.01(1)(e), 218.01(1)(n), 218.01(2)(d)1., 218.01(2a), 218.01(3)(a) 6., 9., 14., 18., 19., 22. and 30., 218.01(3)(bf), 218.01(7a), 218.01 (7a), 218.30, 218.32(2) and (4)(c), 227.51(2), 341.51(3), 342.16(2), Stats., relating to motor vehicle dealer facilities, records and licenses; and motor vehicle trade practices.

SECTION 1. Trans 138.01(2m) is created to read:

Trans 138.01(2m) This chapter applies to any dealer or salesperson who sells or leases a vehicle to a person within the state of Wisconsin and delivers the vehicle within the boundaries of this state notwithstanding any contractual agreement between the dealer or salesperson and the person to the contrary.

SECTION 2. Trans 138.02(2m), (5g), (5r) and (6m) are created to read:

Trans 138.02(2m) "Day" means calendar day, unless otherwise stated in this chapter. The provisions of s. 990.001(4), Stats., apply to calculations of time under this chapter, except that a legal holiday shall be counted as a day if the dealer is open for business.

(5g) "Motor vehicle dealer" or "dealer" has the meaning provided in s. 218.0101(23)(a), Stats.

(5r) "Motor vehicle salesperson" or "salesperson" has the meaning provided in s. 218.0101(24), Stats.

(6m) "Pay-off" means the outstanding balance of any note or loan secured by a lien on a vehicle, or in the case of a leased vehicle, the lease buy out.

SECTION 3. Trans 138.02(10) is amended to read:

Trans 138.02(10) "Sell" means to transfer or offer to transfer ownership of a motor vehicle for compensation, whether or not the person executing or offering to execute the transfer owns the vehicle. Selling includes displaying all of the following:

(a) Displaying, depicting, or describing the vehicle to potential ~~buyers~~ purchasers and indicating by any means that the person is willing to sell the vehicle or accept an order for the vehicle's future sale or the sale of a similar vehicle. ~~The term also includes executing~~

(b) Executing or offering to execute a lease with a requirement that the lessee purchase the vehicle.

(c) Accepting or negotiating an order to purchase a vehicle placed by fax, telephone, the Internet, mail or some other means with a person within this state, if the vehicle purchased as a result of the order is delivered to the purchaser at a location within this state.

NOTE: This definition of "selling" includes the activities of consignment dealers, who may display vehicles and negotiate sales on behalf of the vehicles' owners but do not own the vehicles themselves.

SECTION 4. Trans 138.03(6) is created to read:

Trans 138.03(6) A motor vehicle dealer who is not located in this state, who accepts vehicle purchase orders or lease agreements placed by fax, telephone, the Internet, mail, or some other remote means from persons within this state, and who delivers vehicles to persons within this state is exempt from the dealer business facilities requirements of sub. (1), provided that the dealer maintains a business office in another jurisdiction at which the books, records and files pertaining to vehicle sales or leases to persons in this state are maintained and the dealer makes these documents available to the department for inspection upon demand.

SECTION 5. Trans 138.04(intro.), (1)(intro.), (a) and (b)(intro.) are amended to read:

Trans 138.04 Records kept. (intro.) ~~The~~ This section establishes the minimum of books and records required to be kept and maintained at the licensed business premises by motor vehicle dealers and used motor vehicle wholesalers under ss. 218.0116(3) and (5) and 342.16(2), Stats., shall include: and the required retention periods for those records.

(1)(intro.) Motor vehicle dealers shall maintain, at a minimum, the following books and records:

(a)(title) Ownership records. 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. If a manufacturer or lending institution is holding the title or MSO to ensure payment at time of sale, the dealer shall have for each such vehicle either a factory invoice, a completed dealer reassignment form, or a purchase contract evidencing trade-in or purchase.

(b)(intro.)(title) Consignment sale documents. 1. Written consignment agreement between owner and dealer for each vehicle not owned by the dealer and offered for sale by the dealer. Consignments between motor vehicle dealers are prohibited. Nor may wholesalers consign vehicles to motor vehicle dealers. Each consignment agreement shall contain:

SECTION 6. Trans 138.04(1)(b)1. to 7. are renumbered Trans 138.04(1)(b)1.a. to g. and Trans 138.04(1)(b)1.g., as renumbered, is amended to read:

Trans 138.04(1)(b)1.g. An agreement between the vehicle's owner and the dealer providing that the dealer will hold the title certificate or a copy of both sides of the original title certificate for inspection by potential ~~buyers~~ purchasers during the period of

consignment, and that the title reassignment by the owner portion of the original title certificate will not be signed until the vehicle is actually sold, and. The agreement shall also provide that if the vehicle is not sold during the duration of the consignment, the dealer will promptly return the title certificate to the owner along with the vehicle.

SECTION 7. Trans 138.04(1)(b)2., (c)(title) and (d)(title) are created to read:

Trans 138.04(1)(b)2. Copies of any documents required to be created under s. Trans 139.08.

(c)(title) *Vehicle condition disclosures.*

(d)(title) *Odometer disclosure.*

SECTION 8. Trans 138.04(1)(e) is amended to read:

Trans 138.04(1)(e)(title) Contracts. Original or copy of motor vehicle purchase contracts, as required by s. Trans 139.05, purchase orders and invoices. Copy of MV1 or MV11, Wisconsin title ~~and~~ registration or license plate application forms, completed for each vehicle purchaser as additional evidence of sale, and information regarding collection of sales tax and Wisconsin title and registration fees, when applicable. If the contract supersedes any prior offer or contract between the parties, copies of the superseded contract as required by s. Trans 139.05(1)(a)2.

SECTION 9. Trans 138.04(1)(f)(title) is created to read:

Trans 138.04(1)(f) *Dealer record book.*

SECTION 10. Trans 138.04(1)(g) is renumbered Trans 138.04(3) and amended to read:

Trans 138.04(3)(title) Retention requirements. The used vehicle information as ~~specified~~ described in par. (f) ~~(1)(f)~~ shall be maintained for a period of 5 years, as required by s. 342.16, Stats., and all other required records shall be maintained for a period of 5 years from the date of sale, including ~~facsimile~~ copies of factory invoices,

dealer reassignment forms, consignment agreements, purchase contracts, MV1 or MV11 Wisconsin title and registration or license plate applications, ~~used motor vehicle disclosure labels~~ Wisconsin buyers guides, regular and conforming power of attorney forms, prior owner odometer disclosure statements, dealer's subsequent odometer disclosure statements, lessor's notices to lessees relating to odometer disclosure required at end of lease, and lessee's odometer disclosure statement completed at end of lease. The records shall be kept in the place of business during business hours and shall be open to inspection and copying by a representative of the department during reasonable business hours.

NOTE: The current Wisconsin Title and License Plate Application forms used by dealers is form MV-11, which may be purchased from motor vehicle dealer form supply companies. MV-1 is used by the general public for this purpose and is available from motor vehicle service centers or on the Internet at <http://www.dot.state.wi.us>

SECTION 11. Trans 138.04(1)(h)(title) is created to read:

Trans 138.04(1)(h) *Electronic record keeping.*

SECTION 12. Trans 138.04(2) is amended to read:

Trans 138.04(2) Motor vehicle wholesalers (used vehicles), ~~items~~ shall maintain those books and records included in sub. (1)(a), (d), and (f) and (g) as for the period specified under sub. (3). The records and books to be maintained are limited to used vehicle record book books, invoices, dealer reassignment forms, regular and conforming power of attorney forms, prior owner odometer disclosure statements and wholesaler's subsequent odometer disclosure statements.

SECTION 13. Trans 138.05(5) is amended to read:

Trans 138.05(5) Rescind the vehicle sale transaction if unable to furnish clear title to the purchasing dealer within ~~42~~ 14 calendar days following date of sale, if so requested by the purchasing dealer.

SECTION 14. Trans 138.08(2) is amended to read:

Trans 138.08(2) The duration of each sale shall ~~shall~~ may not exceed 10 business days.

SECTION 15. Trans 139.01(3) is created to read:

Trans 139.01(3) This chapter applies to any sale or lease of a vehicle by a dealer to a person within the state of Wisconsin if the vehicle is delivered within the boundaries of this state notwithstanding any contractual agreement between the dealer and person to the contrary.

SECTION 16. Trans 139.02(3m), (6m), (9r), (10g) and (10r) are created to read:

Trans 139.02(3m) "Day" means calendar day, unless otherwise stated in this chapter. The provisions of s. 990.001(4), Stats., apply to calculations of time under this chapter, except that a legal holiday shall be counted as a day if the dealer is open for business.

(6m) "Lease buy-out" means the lease option price or, if there is no option price, the amount the lessee shall pay the lessor to terminate the lease and transfer title to the vehicle.

(9r) "Manufacturer warranty" means the original new vehicle warranty issued by the vehicle manufacturer. That term includes any motor home warranty issued by the vehicle engine or chassis manufacturer. Manufacturer warranty does not include a warranty issued by a manufacturer of vehicle parts or services not warranted by the vehicle manufacturer.

(10g) "Motor vehicle dealer" or "dealer" has the meaning as provided in s. Trans 138.02(5g).

(10r) "Motor vehicle salesperson" or "salesperson" has the meaning as provided in s. Trans 138.02(5r).

SECTION 17. Trans 139.02(11) and (19) are amended to read:

Trans 139.02(11) "New" means any untitled or non-privately titled motor vehicle of the stated model year which has not been a demonstrator and has not been operated more than ~~100 miles or more than 500 miles if the vehicle's mileage is disclosed on the purchase contract before the buyer signs the contract~~ 200 miles for purposes other than manufacturer tests, pre-delivery tests by a dealer, dealer exchange or delivery.

(19) "Service agreement contract" means any repair agreement sold by a dealer.

SECTION 18. Trans 139.04(4) and (6)(a)(intro.) are amended to read:

Trans 139.04(4) USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE. Dealer and salespersons shall inform prospective retail purchasers of used motor vehicles in writing before purchase contract execution, in the manner and on the form prescribed in sub. (6). This disclosure shall include all significant existing mechanical, electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor ~~plan~~ pan, frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can find using reasonable care.

(6)(a)(intro.) Except as provided in ~~par.~~ pars. (c) and (d), each used motor vehicle displayed or offered for sale by a dealer shall display a guide as prescribed by the department. The guide shall be prepared by an authorized employee of either the dealer, another dealer having the same majority ownership as the dealer, or a predecessor dealer at the same location as the dealer. The guide shall be completed in duplicate and contain the printed names of the vehicle inspector and the records inspector. ~~The original guide shall be signed by the dealer or a salesperson, prior to separating the copy for display, shall sign the original guide.~~ The Except as provided in par. (d), the copy shall be displayed within the vehicle, attached to a window ~~except~~

~~where not if possible, and shall be readable from the outside of the vehicle, or attached to motor driven cycles,~~ and it shall become the possession of the purchaser upon acceptance of delivery. The original shall be signed by the purchaser prior to delivery of the motor vehicle and shall be retained by the dealer for 5 years. The guide shall clearly state in simple and concise language:

SECTION 19. Trans 139.04(6)(c)(intro.) is amended to read:

Trans 139.04(6)(c) The written disclosures required by pars. (a) and (b) ~~shall~~ do not apply to:

SECTION 20. Trans 139.04(6)(d) is created to read:

Trans 139.04(6)(d) The written disclosures required by pars. (a) and (b) are not required to be posted on a motorcycle. The motorcycle dealer may, at its option, display Wisconsin Buyer's Guides on motorcycles and may employ mechanisms to protect them from weather. A Wisconsin Buyer's Guide for a motorcycle that is not displayed on the vehicle shall be maintained by the dealer and provided upon request to any person who requests to see the label or who makes an offer to purchase the vehicle. The dealer or salesperson shall show or provide a copy of the Wisconsin Buyer's Guide to a person who desires to make an offer to purchase the vehicle before the dealer drafts the purchase offer and before the person delivers an offer to the dealer. The label shall become the possession of the purchaser upon acceptance of delivery.

SECTION 21. Trans 139.05(1)(a) is amended to read:

Trans 139.05(1)(a) An exact copy of the motor vehicle offer to purchase shall be provided to the purchaser at the time the offer is signed by the purchaser except in the case where the offer has not left the presence of the purchaser and is accepted by the dealer licensee in the presence of the purchaser. In addition, whenever a motor

vehicle offer to purchase is signed and accepted by a dealer licensee, becoming a binding motor vehicle purchase contract, an exact copy of the purchase contract shall be provided to the purchaser. Any changes to the offer to purchase after signing by the purchaser, or to the purchase contract subsequent to dealer acceptance, shall be ~~notated and initiated by all parties on all copies.~~ made in one of the following manners:

SECTION 22. Trans 139.05(1)(a)1. and 2. are created to read:

Trans 139.05(1)(a)1. All parties shall notate and initial all copies of the original documents.

2. A motor vehicle dealer shall prepare a replacement contract indicating that it replaces the original contract documents. The motor vehicle dealer shall retain the original contract documents in the manner required by s. Trans 138.04(1)(e). Making material changes to the replacement contract without direct oral disclosure of those changes to the purchaser is an unfair sales practice.

SECTION 23. Trans 139.05(2)(f) is amended to read:

Trans 139.05(2)(f) Reference all warranties and service contracts in the following language:

"WARRANTY INFORMATION "

Check applicable boxes. Refer to separate document for coverages and exclusions.

Dealer Warranty
 AS IS - No Warranty
Dealer disclaims all warranties including implied warranties of merchantability and fitness for a particular Purpose.
 Limited Warranty
Refer to separate warranty document for coverages and Exclusions.

Manufacturer Warranty
 New Vehicle Warranty
 Expired
 Not known
 Cancelled due to salvage or other vehicle history.
 Remaining vehicle mfr warranty - Call the mfr or refer to warranty booklet for details.

Term: _____ (months) Expiration: _____ (date)
_____ (miles) _____ (miles)
whichever comes first whichever comes first

Percent of retail repair costs Deductible to be paid by You
to be paid by You _____% \$ _____

Deductible to be paid by You Transfer fee to be paid by
\$ _____ You \$ _____

Pay to: Mfr
 Dealer

Service Agreement Contract Information

~~Service Agreement~~ Contract

Term: ____ (months) ____ (miles), whichever comes first.

Percent of retail repair costs to be paid by You: ____%

Deductible to be paid by You \$ ____ "

SECTION 24. Trans 139.05(2)(g) is repealed and recreated to read:

Trans 139.05(2)(g) State the price due on acceptance of delivery of the vehicle and contain an itemized calculation of the price. The itemized calculation of the price shall state the manufacturer's suggested retail price, if the vehicle is a new vehicle, or the price stated on the Wisconsin Buyer's Guide, if the vehicle is a used vehicle, and all additional charges, mark-ups, mark downs, discounts or other adjustments made to arrive at the price due upon acceptance of delivery, including where applicable, but not limited to, delivery charges, sales tax, license and title fees, down-payment, owned trade-in allowance, positive or negative leased trade-in allowance and estimated or actual pay-off amount, or estimated or actual lease buy-out amount as permitted under sub. (8g) for any loan secured by a trade-in vehicle. Rebates shall be referenced separately by dollar amount and assignment. The itemized calculation of the vehicle's price shall be made on the face of the purchase contract, except that the components of the total manufacturer's suggested retail price may be provided by reference to the

vehicle's window label or in an attachment to the purchase contract. The use of an attachment does not alter dealer's responsibility to comply with s. Trans 139.04(2)(a). The purchaser is not required to sign the dealer's attachment to the purchase contract.

SECTION 25. Trans 139.05(2)(i) and (j) are amended to read:

Trans 139.05(2)(i) ~~Make~~ Immediately above the contract signature block, make specific reference to any penalty which may be assessed to the purchaser for non-acceptance of the vehicle. The penalty ~~shall~~ may not exceed 5% of the cash price as provided by s. 218.0141, Stats.

~~(j) Clearly state whether or not the contract is subject to the purchaser obtaining acceptable financing through the dealer or at the creditor of the purchaser's choice and how long the purchaser has to obtain financing~~ contingencies in the manner provided in s. Trans 139.055. If the purchaser is unable to obtain acceptable financing, the purchaser may cancel or rescind the contract and shall, within one business day, receive a full refund of any down-payment, and return of trade-in vehicle, or title for trade-in vehicle, or both, and no penalty shall be assessed. If the trade-in vehicle is not available, the purchaser shall receive the trade-in allowance.

SECTION 26. Trans 139.05(2)(jm) is created to read:

Trans 139.05(2)(jm) Include any disclosure required under sub. (6m).

SECTION 27. Trans 139.05(2)(jr) is created to read:

Trans 139.05(2)(jr) If the purchase offer is for a vehicle for which the motor vehicle dealer has already executed a purchase contract, the purchase offer shall clearly state that that purchase offer is contingent on the prior executed purchase contract not being completed. Such a contingent purchase offer shall also provide that the purchaser may rescind the offer at any time prior to being notified by the dealer that the prior executed purchase contract was not completed and that the contingency has

been removed from the purchaser's contingent purchase offer. If the purchase contract is rescinded or the prior executed purchase contract completed, any downpayment or trade-in shall be returned within one business day.

SECTION 28. Trans 139.05(5)(b)3. and (6) are amended to read:

Trans 139.05(5)(b)3. ~~State~~ Local, state or federal tax ~~rate~~ changes.

(6) DAMAGE DISCLOSURE. On any new vehicle or demonstrator or executive vehicle, any corrected damage exceeding 6% of the manufacturer's suggested retail price, as measured by retail repair costs, and all uncorrected damage shall be disclosed in writing to the purchaser prior to delivery. Damage to glass, tires, ~~or~~ bumpers, moldings or audio equipment is excluded from the 6% rule when replaced by identical manufacturer's original equipment.

SECTION 29. Trans 139.05(6m), (8g) and (8r) are created to read:

Trans 139.05(6m) ESTIMATED MILEAGE AT DELIVERY. If a motor vehicle dealer enters into a purchase contract to sell a new vehicle as defined in s. Trans 139.02(11) that is not available at the dealers' location, the dealer shall provide the purchaser with an estimate of vehicle mileage at delivery. The purchase contract shall be cancelable at purchaser's option if the mileage of the vehicle upon delivery exceeds the dealer's estimate. This option ends upon acceptance of delivery. Once acceptance of the vehicle occurs, any purchaser's rights to cancel the purchase contract on the basis of excess mileage over dealer's good faith estimate are waived. The purchase contract shall state in bold face type the following: IF THE MOTOR VEHICLE DEALER AND PURCHASER ENTER INTO A PURCHASE CONTRACT FOR A NEW MOTOR VEHICLE NOT AVAILABLE AT THE DEALER'S LOT, THE DEALER AND PURCHASER AGREE THAT THE VEHICLE MILEAGE UPON DELIVERY WILL NOT EXCEED _____ <motor vehicle dealer fills in estimated mileage> MILES.

BEFORE VEHICLE DELIVERY, PURCHASER HAS THE RIGHT TO CANCEL THE PURCHASE CONTRACT IF THE MILEAGE OF THE VEHICLE EXCEEDS THAT AMOUNT.

(8g) ESTIMATED TRADE-IN LIEN PAYOFF AMOUNTS. When the payoff for a trade-in vehicle is unknown, the dealer may estimate the payoff in the itemization of vehicle price required under subsection. (2)(g). Where such an estimate is used, the purchase contract shall provide that the purchaser may rescind the purchase contract if the actual amount needed to pay off all extensions of credit secured by the motor vehicle exceeds the estimated payoff amount used in the itemized calculation of vehicle price by more than 1 payment on the note secured by the trade-in vehicle. The actual difference between the estimated payoff and actual payoff shall be disclosed by the dealer to the purchaser in writing. A purchaser's refusal to accept delivery of a vehicle or agree in writing to waive the payoff difference within 7 days of notification by the dealer that contract contingencies have been met and disclosure of the payoff difference shall rescind the purchase contract. Adjusting the contract price to reflect an actual loan payoff amount is not bushing if the dealer complies with the requirements of this subsection.

(8r) VEHICLE REBATES. (a) The existence of a manufacturer's or other rebate on a vehicle is a material item in determining the price of the vehicle. A purchase contract shall provide that if, for any reason, a purchaser does not qualify for a rebate that is referenced in the purchase contract as required by (2)(g), the purchaser may rescind the purchase contract unless the dealer discounts the purchase price of the vehicle by the amount of the rebate. If a purchaser does not qualify for a rebate and the dealer will not provide a discount in the amount of the rebate, the dealer shall notify the purchaser in writing of the fact that the purchaser does not qualify for the rebate and

notify the purchaser that the contract shall be rescinded unless purchaser, within 7 days, signs a new purchase contract for the vehicle for the new higher contract price. A purchaser's refusal, within 7 days of receiving written notification, to execute a new purchase contract rescinds the original contract. Purchaser's execution of a new contract after disclosure of the fact that purchaser did not qualify for a rebate waives purchaser's objections related to the rebate.

(b) Delivering a motor vehicle to the purchaser without disclosing in writing that the purchaser does not qualify for the rebate in the manner required under par. (a) is "bushing" under s. Trans 139.05(5)(c) unless the dealer provides a discount to the purchaser for the amount of the rebate and delivers the vehicle at the original contract price.

(c) If a manufacturer rebate not referenced in a purchase contract becomes available based on the delivery date of a vehicle, and a retail purchaser qualifies for the rebate at the time of delivery, the rebate shall be awarded to the purchaser and the contract shall be amended accordingly as provided in s. Trans 139.05(1)(a). For purposes of this section, "manufacturer rebate" means a rebate provided by the vehicle manufacturer directly to the purchaser, including when assigned to the motor vehicle dealer, and does not include manufacturer rebates or wholesale incentives to the dealer or manufacturer discounts from the wholesale price to the dealer.

SECTION 30. Trans 139.05(10) and (11) are amended to read:

Trans 139.05(10) ADDITIONAL DISCLOSURES. The motor vehicle purchase contract shall clearly state ~~"Motor vehicle dealer sales are governed by ch. 218, Stats., and ch. Trans 139 administered by the~~ "Contact the selling motor vehicle dealer to discuss any questions or problems about your vehicle or this contract. If you are unable to resolve any disputes with the dealer, you may contact: Division of Motor

~~Vehicle~~ Vehicles, Dealer ~~License~~ Section, Wisconsin Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707. The Dealer Section licenses motor vehicle dealers and administers the administrative regulations governing consumer protection in vehicle sale transactions, Ch. Trans 139, Wis. Admin. Code."

(11) CONTRACT PROHIBITED. A purchase contract for a used motor vehicle ~~shall~~ may not be executed with the retail purchaser until the vehicle has been inspected and findings disclosed as required by s. Trans 139.04(4) and (5) unless no inspection is required under s. Trans 139.04(6)(c).

SECTION 31. Trans 139.05(11m) is created to read:

Trans 139.05(11m) CONTINGENT PURCHASE CONTRACTS. A motor vehicle dealer who has a signed purchase contract to sell a particular vehicle with a purchaser that is subject to satisfaction of a purchaser's contingency before the purchase contract becomes final may accept purchase offers for that vehicle subordinate to that of the purchaser. Any such subordinate purchase offer shall include the disclosures required by s. Trans 139.05(2g).

SECTION 32. Trans 139.055 is created to read:

Trans 139.055 Financing. (1) DEALER ARRANGED FINANCING. (a) *Notice to consumer regarding ineligibility for financing.* If a motor vehicle purchase contract becomes binding upon the purchaser contingent upon the motor vehicle dealer providing financing on terms disclosed to the purchaser in advance of the execution of the purchase contract, the contract shall provide that if the dealer is unable to provide such financing, the contract shall be rescinded if the dealer provides notice to the purchaser within 14 days of the contract date that dealer financing is unavailable. If the dealer fails to timely provide such notice, the purchaser may elect to carry out the contract and the dealer shall, within 28 days of the contract date, finance the purchase

of the vehicle on the terms specified in the contract and deliver the vehicle in the manner specified in the purchase contract.

(b) *Establishing credit terms between the contract date and delivery date for a vehicle.* With respect to a contract to purchase a motor vehicle that is contingent on the motor vehicle dealer arranging financing for the motor vehicle that is acceptable to the purchaser, a dealer may, subsequent to the contract date and prior to the purchaser accepting delivery of the motor vehicle, provide the customer with notice that the dealer has arranged financing for the vehicle for which the customer is qualified. If the transaction is a consumer transaction, the notice shall include all disclosures of the terms of the arranged financing that are required by the federal truth-in-lending act including the amount to be financed, the annual interest rate, total principal and interest payments, and the monthly interest and principal payment due over the course of the loan. The notice shall state that the purchaser has 7 days to accept or reject the proposed financing. If the purchaser accepts the proposed financing, the financing contingency of the contract shall be deemed satisfied and the dealer shall be bound to provide financing on the terms set forth in the notice. If the purchaser rejects the proposed financing but waives the financing contingency, the financing contingency shall be deemed waived and the purchaser shall be bound to the contract without regard to whether the purchaser is able to secure financing. If the purchaser fails to respond to the notice within 7 days or rejects the proposed financing and does not waive the financing contingency, the purchase contract shall be rescinded.

(2) PURCHASER ARRANGED FINANCING. A motor vehicle purchase contract that is contingent on a purchaser arranging financing is rescinded if the purchaser does not provide evidence to the dealer that the purchaser has arranged acceptable financing

for the purchase of the vehicle, such as a loan commitment letter, within a time established in the purchase contract.

(3) NO FEES ON VOID CONTRACTS. A dealer may not charge a fee or penalty to the purchaser in connection with a contract that is rescinded under this section.

SECTION 33. Trans 139.06(intro.) and (10) are amended to read:

TRANS 139.06 Warranties. For the purpose of this chapter, service ~~agreements~~ contracts are not considered warranties, but for the purposes of disclosure and performance as provided in subs. (1) through (7) and in sub. (10), the term "warranty" shall include service ~~agreements~~ contracts.

(10) WARRANTOR BASIC OBLIGATION. (a) It is an unfair practice and prohibited for a warrantor to fail to service or repair a motor vehicle in accordance with the terms and conditions of the warranty or service ~~agreement~~ contract.

SECTION 34. Trans 139.06(10)(b) to (e) are created to read:

Trans 139.06(10)(b) A dealer shall service or repair a motor vehicle under the same terms and conditions as a manufacturer warranty if dealer provides information to the purchaser that there is a remaining manufacturer warranty on the vehicle that will be honored by the manufacturer, and the vehicle is not warranted or the manufacturer subsequently rejects a request to transfer the warranty to the purchaser.

(c) A dealer shall service or repair a motor vehicle part under the same terms and conditions as a part manufacturer warranty if the dealer provides information to the motor vehicle purchaser that there is a remaining part manufacturer warranty on a vehicle part for which there is no warranty or that the warrantor refuses to transfer to purchaser.

(d) A dealer shall service or repair a motor vehicle under the same terms and conditions as a third party warranty if, before the purchaser accepts delivery of the motor vehicle, dealer provides information to the purchaser that there is a remaining third-party warranty on the vehicle that will be honored by the third party warrantor and the vehicle is not warranted or the third party subsequently rejects a request to transfer the warranty to the purchaser.

(e) Under this subsection, a dealer's obligation to honor a warranty that the dealer improperly discloses or disclaims to the purchaser is limited to providing motor vehicle service and repairs under the same terms and conditions the original warrantor would have been obligated to honor. A dealer's obligation to honor a warranty is also limited by the expiration date or mileage set forth under the motor vehicle manufacturer, third party or part manufacturer warranty, or until the motor vehicle attains the age or mileage the dealer discloses to the purchaser in the Motor Vehicle Purchase Contract, in accordance with s. Trans 139.05(2)(f), whichever is later.

Note: A dealer is not required to ascertain whether remaining warranty is available if the dealer does not provide information to the purchaser that there is a remaining warranty available for transfer to the vehicle purchaser, except that new car dealers should ascertain availability of remaining manufacturer warranties for used cars of the same line make for which the dealer holds a franchise.

SECTION 35. Trans 139.07 is renumbered Trans 139.09.

SECTION 36. Trans 139.07 and 139.08 are created to read:

TRANS 139.07 Satisfaction of liens. When a dealer accepts a vehicle in trade that is subject to an outstanding lien and agrees in the purchase contract to pay off the balance due the lien holder, the dealer shall pay the amount stated in the purchase contract due the lien holder, after any adjustments for any estimated trade-in lien payoff amounts pursuant to s. Trans 139.05(8g) within 14 days of taking delivery of the trade-in vehicle. The dealer shall be responsible for any interest that accrues, penalties

assessed, late fees, or other charges made on the debt secured by the lien to the extent those penalties, fees or other charges result from the dealer delaying payment of the amount stated in the purchase contract to be due the lien holder beyond 14 days of taking delivery of the trade-in vehicle.

Trans 139.08 Consignment vehicles. (1) A dealer shall comply with all the requirements of this section with respect to any vehicle it sells on a consignment basis. Consignment sales include any arrangement by which a dealer displays or sells a vehicle on behalf of a person other than the dealer.

(2) No dealer may accept delivery of or display a consignment vehicle for sale until all of the following requirements have been met:

(a) Dealer enters into a written consignment agreement with the consignor specifying the terms of the consignment agreement. A consignment agreement for the sale of a vehicle that is not owned by the consignor for personal, family or household purposes between a dealer and a person shall include a provision that the consignor retains a security interest in the vehicle in the amount of the proposed sale price of the vehicle. A consignment agreement for sale of goods owned by the consignor for personal, family or household purposes shall include a provision that the consignor retains ownership of the vehicle.

(b) In a transaction involving goods owned by the consignor for purposes other than personal, family or household purposes, the dealer prepares and executes a U.C.C. financing statement naming consignor as a secured party and files the U.C.C. financing statement with the department of financial institutions. This paragraph does not apply to a consignment vehicle sale through a salvage pool or wholesale auction. The financing statement shall be prepared and filed so as to properly perfect the

consignor's security interest. The cost of filing the financing statement may be charged to the consignor.

(3) A dealer shall remit any monies due a consignor under a consignment agreement within 7 days of the date a consignment vehicle is sold.

NOTE: The purpose of this section is to insure that a consignor's interest in any vehicle consigned is protected from adverse claims of motor vehicle dealer creditors, administrators, or trustees. Section 402.326(5), Stats., provides that personal, family or household goods do not become the property of a consignee dealer upon consignment. Therefore, no U.C.C. financing statement is required to protect consignors of personal vehicles. A U.C.C. financing statement is required to perfect the interest of a business consignor in a vehicle consigned to a dealer. ss. 409.310 and 409.319, Stats.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on March 1, 2004.

Signed at Madison, Wisconsin, this ____ day of
December, 2003.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation