



CLIFFORD OTTE

WISCONSIN STATE REPRESENTATIVE
27TH ASSEMBLY DISTRICT

March 6, 1997

To: The Members
Assembly Committee on Consumer Affairs

From: Representative Clifford Otte, Chair *C.O.*

MEMO

On March 6, 1997, the following clearinghouse rule was referred to the Assembly Committee on Consumer Affairs:

Clearinghouse Rule 96- 044, relating to motor vehicle trade practices.

The deadline for committee action on this rule is **April 7, 1997**. Please find herewith a copy of the rule. If you are interested in requesting a hearing and/or submitting comments, please do by **March 18, 1997**.

CR 96-044

The Wisconsin Department of Transportation proposes an order to repeal TRANS 139.03(6), 139.04(6)(a)5 and 139.05(10)(b) to (d); renumber TRANS 139.02(1) to (7), (9) and (11) to (14); renumber and amend TRANS 139.02(8), 139.04(6)(a)6; amend TRANS 139.01(2), 139.02(intro.), 139.03(5), (11) and (16), 139.04(1)(b), (4), (5)(title), (5)(a) and (b)2, (6)(title), (6)(a)(intro.), (a)1 and 3, and (7)(b) and 139.05(10)(intro.) and (a); repeal and recreate TRANS 139.02(10), 139.04(5)(c), (6)(a)4 and (b), and 139.05(2)(f); and create TRANS 139.02(1), (7), (9m), (15) to (17) and (21), and 139.04(6)(c)4 to 7, (8) and (9), relating to motor vehicle trade practices.

**REPORT OF THE DEPARTMENT OF TRANSPORTATION
ON THE FINAL RULE DRAFT**

This report is submitted to the presiding officers of the Senate and Assembly for referral to the appropriate standing committees. The report consists of the following parts:

Part 1--Analysis prepared by the Department of Transportation.

Part 2--Rule text in final draft form.

Part 3--Recommendations of the Legislative Council.

Part 4--Analysis prepared pursuant to the provisions of s. 227.19(3), Stats.

Submitted by:


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PART 1

Analysis Prepared by the Wisconsin Department of Transportation

STATUTORY AUTHORITY: ss. 85.16(1), 218.01(5)(c), 227.11(2) and 342.34(3m), Stats.
STATUTES INTERPRETED: ss. 218.01(3)(a), (5)(c) and (7a), 340.01(18p), (25r), (28e) and (55g), 342.10, 342.15, 342.16 and 342.34, Stats.

General Summary of Proposed Rule. The proposed changes to ch. Trans 139 are in response to the following:

- 1993 Wisconsin Act 63, the Title Branding Law, which took effect June 1, 1994, created permanent brands on vehicle titles that provide historical information about the vehicle. This information, whether it appears on the dealer's title to the vehicle or will appear on the new owner's title, is an important and valuable disclosure to a potential buyer. This affects the pre-sale disclosure of a used vehicle's history required by this proposed rule.
- Chapter Trans 305 took effect March 1, 1996, and replaced MVD 5. This affects vehicle equipment disclosures required by this rule.
- A Department team with industry representation recommended making other changes to the Used Vehicle Disclosure Label to improve readability and understandability, and to reflect changes that have taken place in the industry, including changes in automotive technology and sales practices.

The proposed rule amends ch. Trans 139 in the following ways:

- **Definitions for vehicle history and use disclosure** - New definitions are created for the purpose of disclosing a vehicle's history and use. The history and use disclosure required by the rule is not limited to only those conditions that would require a brand.
- **Inspection standard** - The inspection standard a dealer will be held to is stated using plain language, replacing "ascertain as a result of reasonable diligence" with "find using reasonable care."
- **Junk vehicles** - Consistent with long-established Department policy, junk vehicles cannot be retitled and operated on the highways. Only salvage vehicles can be repaired and retitled.
- **Wisconsin Buyers Guide** - A plain language name for the used vehicle disclosure label will make it more apparent to consumers that the label and its contents is meant for them and will mirror the federal Buyers Guide. The "Wisconsin Buyers Guide" will continue to be completed in duplicate but the original will stay with the dealer, who is required to keep it for 5 years, and the copy will go to the consumer.

- **Title brands** - The history and prior use disclosures were expanded to include brands that are on the current title or will be on the new title as part of its pre-sale disclosure per the Title Branding Law.
- **Vehicle description** - Vehicle description requirements will provide more useful information to the potential buyer, including engine size, i.e., cubic inches or liters and number of cylinders, and drive type, i.e., front wheel, rear wheel or four wheel drive.
- **Warranty information** - Warranty information is expanded to better clarify the distinction between manufacturer and dealer warranties.
- **Unfair practice standard** - The Department standard for determining an unfair practice is stated as an item improperly reported that the dealer could have found using reasonable care if the item is reported to the dealer within 30 days.
- **Exclusions to disclosure requirement** - Exclusions to the requirement that a dealer complete and display a buyers guide for a vehicle were expanded to include heavy vehicles except motor homes, junk vehicles and unrepaired salvage vehicles. Junk and salvage vehicle disclosures are specified.
- **Odometer Statements** - Dealers are required to show the title to consumers and, if the dealer got title in their own name pursuant to ch. Trans 154, the dealer is required to show all prior owner odometer statements contained on other documents the dealer must retain.
- **Manufacturer Recalls** - Dealers are required to determine whether a used vehicle offered for sale has any unperformed repairs relating to voluntary manufacturer or NHTSA mandated recalls, if the dealer is franchised by the manufacturer of the vehicle. Dealers are also required to disclose the unperformed repair to the purchaser, or to make the repair, whichever is appropriate.

Fiscal Estimate. One time costs will be incurred to produce a camera ready copy of the revised Wisconsin Buyers Guide for all interested forms vendors. This cost is minimal and can be absorbed under current programs.

Contact Person and Copies of Proposed Rule. This analysis was prepared by Joan Loden, Policy Analyst, Dealer Section, Wisconsin Department of Transportation, Room 806, P.O. Box 7909, Madison, Wisconsin 53707-7909. Copies of the proposed rule may also be obtained upon request, without cost, by writing to Charles M. Supple at the address indicated above, or by calling (608) 267-2315. Hearing-impaired individuals may contact the Department using TDD (608) 266-0396. **Alternate formats of the proposed rule will be provided to individuals at their request.**

PART 2
TEXT OF PROPOSED RULE

Under the authority vested in the state of Wisconsin, department of transportation, by ss. 85.16(1), 218.01(5)(c), 227.11(2) and 342.34(3m), Stats., the department of transportation hereby proposes an order to amend a rule interpreting ss. 218.01(3)(a), (5)(c) and (7a), 340.01(18p), (25r), (28e) and (55g), 342.10, 342.15, 342.16 and 342.34, Stats., relating to motor vehicle trade practices.

SECTION 1. Trans 139.01(2) is amended to read:

Trans 139.01(2) **APPLICABILITY.** This chapter applies to any person applying for or holding a Wisconsin motor vehicle salvage dealer, manufacturer, distributor wholesale auction, dealer or salesperson license.

SECTION 2. Trans 139.02(intro.) is amended to read:

Trans 139.02 DEFINITIONS. Words and phrases defined in ss. 340.01 and 342.01, Stats., apply to this chapter unless a different definition is specified. In this chapter:

SECTION 3. Trans 139.02(1) is renumbered 139.02(2).

SECTION 4. Trans 139.02(1) is created to read:

Trans 139.02(1) "Business use" means any motor vehicle owned or leased by either of the following:

- (a) A company, other than a lessor.
- (b) An individual and primarily operated for business use.

SECTION 5. Trans 139.02(2) to (7) are renumbered 139.02(3) to (6), and (8) and (9), respectively.

SECTION 6. Trans 139.02(7) is created to read:

Trans 139.02(7) "Lease use" means any motor vehicle leased for a period of time exceeding 4 months.

SECTION 7. Trans 139.02(8) is renumbered 139.02(11) and 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 than required for manufacturer's tests, pre-delivery test, dealer exchange or delivery or more than 500 miles if the vehicle's mileage is disclosed on the purchase contract before the buyer signs the contract.

SECTION 8. Trans 139.02(9) is renumbered 139.02(13).

SECTION 9. Trans 139.02(9m) is created to read:

Trans 139.02(9m) "Manufacturer recall" means a recall inspection or repair which the manufacturer of a vehicle has been ordered to have performed by the National Highway Traffic Safety Administration or which the manufacturer has agreed voluntarily to have performed for safety reasons.

SECTION 10. Trans 139.02(10) is repealed and recreated to read:

Trans 139.02(10) "Material" means that a reasonable person would attach importance to its existence or a seller knows or had reason to know that a buyer would regard it as important. A seller has reason to know that information is material if a buyer specifically requests the information.

SECTION 11. Trans 139.02(11) to (14) are renumbered 139.02(14), and (18) to (20), respectively.

SECTION 12. Trans 139.02(12), (15) to (17), and (21) are created to read:

Trans 139.02(12) "Personal use" means any motor vehicle owned or leased by an individual and primarily operated for personal use.

(15) "Reasonable care" means the following:

(a) For vehicle inspections, a standard that requires an interior and exterior inspection, an under-hood and under-vehicle inspection, and a test drive. It does not require taking the vehicle apart or running tests unless it is necessary to diagnose apparent symptoms. Brakes may require some disassembly to satisfy the requirements in ch. Trans 305.

(b) For records inspections, a standard that requires providing information the dealership gets from manufacturer and auction notices, prior owner documents and disclosures, and their own vehicle inspection and repair records. It does not require contacting prior owners or obtaining records of previous titles unless necessary to clarify inconsistent or questionable information that is apparent.

(16) "Rebuilt salvage" means any repaired vehicle that has ever had a salvage notation on its certificate of title from Wisconsin or another jurisdiction.

(17) "Rental use" means any motor vehicle rented for a period of time not exceeding 4 months.

(21) "Water damaged vehicle" means a vehicle that has been materially damaged by being covered, in whole or in part, by water, whether by flood or other occurrence and the damage is less than what is required to meet the definition for branding in s. 342.10(3)(d), Stats.

SECTION 13. Trans 139.03(5) is amended to read:

Trans 139.03(5) **USED VEHICLE COMPARATIVE SAVINGS.** The use of new motor vehicle list manufacturer suggested retail prices, wholesale or retail dealer pricing

guides, or similar price guides to advertise comparative savings for used vehicles other than demonstrators or executives is an unfair practice and prohibited.

SECTION 14. Trans 139.03(6) is repealed.

SECTION 15. Trans 139.03(11) and (16) are amended to read:

Trans 139.03(11) **NAME AND ADDRESS.** Dealer and salesperson licensees are prohibited from advertising motor vehicle sales at an address or from listing a phone number or electronic mail address other than that of either the licensed business premises, or temporary locations as authorized by s. Trans 138.08, except that a licensee may list the phone number or electronic mail address of the licensee's home in addition to the business phone number and address on a business card. Advertisements shall include the business name.

(16)(title) **FLOOD OR WATER DAMAGED VEHICLES.** Whenever a dealer licensee offers, promotes the sale of, or sells a flood or water damaged vehicle, all advertising relating to that vehicle shall disclose that the vehicle has been flood or water damaged ~~regardless of the extent of damage.~~ Required disclosure of flood or water damage is limited to that which the dealer could find using reasonable care.

SECTION 16. Trans 139.04(1)(b), (4), (5)(title), (a) and (b)2 are amended to read:

Trans 139.04(1)(b) Both the chassis model year when determinable and the finished vehicle model year shall be stated on the Wisconsin buyers guide and the motor vehicle purchase contract if the model year of a ~~new~~ motor vehicle chassis is different than the model year of the ~~new~~ finished vehicle, as designated by the converter-manufacturer or final stage manufacturer under the provisions of s. 137.06(5)(a).

(4) **USED MOTOR VEHICLE GENERAL CONDITION DISCLOSURE.** Dealer and ~~salesperson licensees~~ 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) ~~of~~. This disclosure shall include all significant existing mechanical, and structural electrical and electronic defects and damage and evidence of repair to strut tower, trunk floor pan, frame or structural portion of unibody, including corrective welds. Disclosure of information shall be that which the licensee can ascertain as a result of find using reasonable diligence, which shall consist of but is not limited to a walk-around and interior inspection, under hood inspection, under vehicle inspection and a test drive care.

(5)(title) USED MOTOR VEHICLE EQUIPMENT REQUIREMENTS AND DISCLOSURE. (a) Dealer and salesperson-~~licensees~~ 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 whether or not the condition of a vehicle for sale is such that it can be legally operated at all times in accordance with ch. 347, Stats., and ch. ~~MVD-5~~ Trans 305. Disclosure of information shall be that which the licensee dealer can ascertain as a result of find using reasonable diligence, which shall consist of but is not limited to a walk-around and interior inspection, under hood inspection, under vehicle inspection, and a test drive care.

(5)(b)2. Specify for the retail purchaser the defects which are in violation of ch. 347, Stats., and ch. ~~MVD-5~~ Trans 305 as prescribed in sub. (4) and in this subsection.

SECTION 17. Trans 139.04(5)(c) is repealed and recreated to read:

Trans 139.04(5)(c) If because of the condition of the vehicle at the time of sale it meets the definition of a junk vehicle or a salvage vehicle, the dealer and salespersons shall make one of the following disclosures conspicuously on the motor vehicle purchase contract prior to its execution:

1. If the vehicle is a junk vehicle: "WARNING! Sold as junk vehicle. This vehicle may never be retitled." The dealer shall notate the title as "Junk Vehicle" and forward the title to the department within 10 days after determining that the vehicle is a junk vehicle.

2. If the vehicle is a salvage vehicle and sold with a salvage title: "WARNING! This is a salvage vehicle and cannot be registered for use on Wisconsin highways until it passes an authorized inspection which requires payment of a fee. Title will be issued with a rebuilt salvage brand."

NOTE: A vehicle previously titled in another jurisdiction as junked, or a substantially similar term as used in that jurisdiction, may not be titled or registered in Wisconsin. s. Trans 149.10(3).

The Department may not issue a certificate of title for a vehicle if the certificate of title for the vehicle was inscribed by a person other than a state with the word "JUNKED" or any other notation clearly indicating that the vehicle was junked unless the owner provides an affidavit stating that the inscription on the title was entered in error and the vehicle passes an inspection under s. Trans 149.05. The Department may refuse to issue a title for such a vehicle if it concludes that the vehicle was intended to be junked at the time the title was noted as junk. s. Trans 149.09(3).

NOTE: Only licensed salvage dealers can sell junk vehicles or parts.

SECTION 18. Trans 139.04(6)(title) and (a)(intro.), (a)1 and 3 are amended to read:

Trans 139.04(6)(title) WISCONSIN BUYERS GUIDE. (a)(intro.) Except as provided in par. (c), each used motor vehicle displayed or offered for sale by a dealer licensee shall display a label guide as prescribed by the department. The guide shall be prepared by an authorized employe 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 label 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. The original copy shall be displayed within the vehicle, attached to a window except where not possible, and shall be readable from the outside, or attached to motor driven cycles, and it shall become the possession of the purchaser upon delivery. The copy original shall be signed by the purchaser prior to delivery of the motor vehicle and shall be retained by the dealer licensee for 5 years. The label guide shall clearly state in simple and concise language:

(a)1. That the vehicle is used. ~~Vehicle must be designated as "Used," and the~~ All material history, prior use and title brands must shall be clearly and specifically disclosed, for example, ~~privately driven, executive, rebuilt salvage, flood or water damaged, transferred to insurer upon payment of claim, manufacturer buyback, personal use, business use, lease use, rental use, demonstrator, executive, taxi-driven taxicab or public transportation, police vehicle, driver-education, lease, rental, public vehicle, company vehicle, municipally owned or government vehicle, or history and use unknown.~~ If a vehicle had been previously junked or flood damaged, regardless of the extent of damage, that shall be clearly disclosed. All title brands that appear on the existing certificate of title for the vehicle or that will appear on the new certificate of title for the vehicle as required by s. 342.10, Stats., shall be disclosed. The title brand disclosures shall also include any other jurisdiction in which the vehicle has been previously titled. If the vehicle has not been previously titled in another jurisdiction, this disclosure shall specify Wisconsin. Disclosure of history and prior use is not limited to those conditions which require title branding. Required disclosure of the history, prior use and flood damage title brands is limited to that which the dealer licensee could ascertain with find using reasonable diligence care.

neither create any warranties, express or implied, nor affect warranty coverage provided for in the purchase contract. However, it is an unfair practice for a dealer to not remedy an item improperly reported on the guide that the dealer could have found using reasonable care if the buyer has notified the dealer within a reasonable time after the buyer discovered or should have discovered the improperly reported item and the vehicle is made available to the dealership. The dealer shall reasonably remedy or make a good faith effort to reasonably remedy an item improperly reported within 30 days of the buyer's notification.

NOTE: The form prescribed by the Department is the Wisconsin Buyers Guide. A copy of this form is available, at no charge, from the Division of Motor Vehicles, Dealer Section, located in Madison, Wisconsin.

SECTION 22. Trans 139.04(6)(b) is repealed and recreated to read:

Trans 139.04(6)(b) The Wisconsin buyers guide required by par. (a) shall also include the following information:

1. All equipment requirements as required by ch. Trans 305 shall be maintained in proper working condition for the vehicle to be operated legally on Wisconsin highways.
2. Any important consumer information the department identifies as useful to the prospective purchaser, including the department's administrative code authority, address and phone number.
3. Written explanations of any detected problems reported in the general condition or equipment requirements areas.

SECTION 23. Trans 139.04(6)(c)4 to 7 are created to read:

Trans 139.04(6)(c)4. A used motor vehicle with a gross vehicle weight rating of more than 16,000 pounds or a motor vehicle which is or has in the past been registered

in Wisconsin or another jurisdiction at a gross weight exceeding 16,000 pounds. This exclusion does not apply to motor homes.

5. A junk vehicle with a written statement, "This is a junk vehicle", conspicuously displayed.

6. An unrepaired salvage vehicle with a written statement, "This is a salvage vehicle", conspicuously displayed.

7. A vehicle being sold to a lessee of the vehicle or the lessee's agent or employe who operated the vehicle while under lease.

SECTION 24. Trans 139.04(7)(b) is amended to read:

Trans 139.04(7)(b) Show to each prospective purchaser, prior to sale, all odometer disclosure records or true and legible copies of such records relating to a vehicle since last titled, including the current title and all prior owner's owner odometer disclosure ~~statement contained on the conforming title or, if the title is nonconforming, on a separate conforming mileage statement statements.~~

SECTION 25. Trans 139.04(8) and (9) are created to read:

Trans 139.04(8) **WHOLESALE DISCLOSURE REQUIREMENTS.** Sellers in wholesale transactions shall make the disclosures required in s. Trans 139.04(6)(a)1 to wholesale purchasers of motor vehicles in writing before purchase.

NOTE: Sellers include licensed wholesale auctions which are required to collect and pass along the information from the seller to the buyer. Wholesale auctions are responsible for disclosing vehicles owned by dealers, manufacturers or distributors in other jurisdictions.

(9) **MANUFACTURER RECALLS.** Before delivering to a retail purchaser any used vehicle of a line make for which the dealer holds a franchise, the dealer shall do all of the following that are applicable:

(a) Determine from the vehicle's manufacturer whether or not the vehicle is the subject of any unperformed manufacturer recalls.

(b) If the vehicle is the subject of any unperformed manufacturer recalls for which the manufacturer will reimburse the dealer for performing, perform all such recalls or agree in writing to perform such recalls at a time convenient to the customer not later than 20 days after delivery, unless the unavailability of parts or other circumstances beyond the control of the dealer prevents performance within that time.

(c) Disclose in writing to the purchaser any unperformed manufacturer recalls with regard to the vehicle that have been disclosed to the dealer upon inquiry of the manufacturer.

SECTION 26. Trans 139.05(2)(f) is repealed and recreated 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.
Term: _____ (months)
 _____ (miles)
whichever comes first.
Percent of retail repair costs to be paid by You _____ %
Deductible to be paid by You \$ _____

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.
Expiration: _____ (date)
 _____ (miles)
whichever comes first.
Deductible to be paid by You \$ _____
Transfer fee to be paid by You \$ _____
Pay to: Mfr
 Dealer

Service Agreement Information

- Service Agreement
Term: _____ (months) _____ (miles), whichever comes first.
Percent of retail repair costs to be paid by You: _____ %
Deductible to be paid by You \$ _____

SECTION 27. Trans 139.05(10)(intro.) and (a) are amended to read:

Trans 139.05(10)(intro.) **ADDITIONAL DISCLOSURES.** The motor vehicle purchase contract shall:

~~(a) Clearly~~ clearly state "Motor vehicle dealer sales are governed by ch. 218, Stats., and ch. Trans 139 administered by the Motor Vehicle Dealer License Section, Wisconsin Department of Transportation, P. O. Box 7909, Madison, Wisconsin 53707."

SECTION 28. Trans 139.05(10)(b) to (d) are repealed.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the fourth month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2), Stats.

Signed at Madison, Wisconsin, this 24 day of February, 1997.


CHARLES H. THOMPSON
Secretary
Wisconsin Department of Transportation

WISCONSIN LEGISLATIVE COUNCIL STAFF

LCRC
FORM 2

RULES CLEARINGHOUSE

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PART 3

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE 96-044

AN ORDER to repeal Trans 139.04 (6) (a) 5.; to renumber Trans 139.02 (1) to (9) and (11) to (14); to renumber and amend Trans 139.04 (6) (a) 6.; to amend Trans 139.02 (intro.), 139.03 (16), 139.04 (4), (5) (title), (a) and (b) 2., (6) (title) and (a) (intro.), 1. and 3. and (7) (b); to repeal and recreate Trans 139.02 (10), 139.04 (5) (c) and (6) (a) 4. and (b); and to create Trans 139.02 (1), (7), (11) and (14) and 139.04 (6) (c) 4. to 6., relating to motor vehicle trade practices.

Submitted by **DEPARTMENT OF TRANSPORTATION**

03-12-96 RECEIVED BY LEGISLATIVE COUNCIL.

04-10-96 REPORT SENT TO AGENCY.

RNS:RW:kjf;wu

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS [s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

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CLEARINGHOUSE RULE 96-044

Comments

[NOTE: All citations to "Manual" in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. In s. Trans 139.03 (16), although not substantive, the word "the" is inserted before "damage" but not shown as an underscored amendment.

b. Throughout the rule, stricken language should precede adjacent underscored language. [See s. 1.06 (1), Manual.] For examples of errors, see s. Trans 139.04 (4), (6) (a) 3. and (7) (b).

c. Section Trans 139.04 (5) (c) is indicated as "repealed and recreated," but in fact is amended in the rule. However, the language that is not underscored does not reflect the current rule. If the department is actually repealing and recreating the paragraph, underscoring and strike-throughs should not be used.

d. In s. Trans 139.04 (6) (a) 1., "must shall" should replace "must" in the second sentence.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. The phrase "another jurisdiction" is used throughout the rule, but is not defined. A definition of the term would be helpful.

b. In the second sentence of s. Trans 139.04 (5) (c) 1., the term "it" could be replaced by "the title" to avoid having dealers forward junk vehicles to the department.

c. Section Trans 139.04 (6) (a) (intro.) would be clearer if the word “guide” were inserted after “original” in the third sentence.

d. The terms “brand” and “title brand” are used in the rule but not defined. [See s. Trans 139.04 (6) (a) 1.] A definition could clarify the intended meaning of the term.

e. As amended, s. Trans 139.04 (6) (a) 3. reads very awkwardly. The agency may wish to review this portion of the rule to clarify the requirements. One option would be to place the “for example” clauses in a note after the text of the rule. This could also be done with the examples in par. (a) 1. [See s. 1.09 (1), Manual.]

f. In s. Trans 139.04 (6) (b) 1., the word “per” should be replaced by the phrase “as required by.”

PART 4
CR 96-044

ANALYSIS OF FINAL DRAFT OF TRANS 139

(a) **Need for Amended Rule.** The proposed changes to ch. Trans 139 are in response to the following:

- 1993 Wisconsin Act 63, the Title Branding Law, which took effect June 1, 1994, created permanent brands on vehicle titles that provide historical information about the vehicle. This information, whether it appears on the dealer's title to the vehicle or will appear on the new owner's title, is an important and valuable disclosure to a potential buyer. This affects the pre-sale disclosure of a used vehicle's history required by this proposed rule.
- Chapter Trans 305 took effect March 1, 1996, and replaced MVD 5. This affects vehicle equipment disclosures required by this rule.
- A Department team with industry representation recommended making other changes to the Used Vehicle Disclosure Label to improve readability and understandability, and to reflect changes that have taken place in the industry, including changes in automotive technology and sales practices.

(b) **Modifications as a Result of Testimony at Public Hearing.** Public reactions to these proposals came from several speakers at the May 7 and May 9, 1996 hearings, and from written comments submitted to the Department through June 7, 1996. Testimony represented both the interests of the consumer and the interests of the dealer. The Wisconsin Automobile and Truck Dealers Association (WATDA) submitted the most comprehensive list of requests.

Definitions for vehicle history and use disclosure. WATDA makes a number of requests regarding definitions. First, WATDA requests changing the definition of "demonstrator" to mean a vehicle driven more than 500 miles, and changing the definition of "new" to mean a vehicle driven fewer than 500 miles, in addition to the miles required for manufacturer's tests, pre-delivery test, dealer exchange or delivery. This would allow dealers to sell as new a vehicle delivered to a customer who had the deal rescinded shortly after taking delivery. And it would permit up to 500 miles to be put on a vehicle in test drives before a dealership would have to disclose it as a demonstrator.

The Department recognizes that situations may occur that result in rescinding a vehicle sale before the buyer has operated the vehicle many miles. To make it more feasible for the dealer to rescind a deal without losing the opportunity to sell the vehicle as new, the Department agrees to modify the definition of "new" to allow up to 100 miles of operation unconditionally. The Department further agrees to allow up to 500 miles of operation if the mileage is disclosed on the purchase contract before the buyer signs the contract. A consumer who is buying a new vehicle needs to be informed before they agree to buy the vehicle that is has between 101 and 500 miles already on it. To enforce the definition, the mileage limit has to be absolute and not in addition to mileage for other uses which cannot be easily identified.

The Department does not believe that that definition of "demonstrator" needs to be modified. The Department can determine whether a vehicle was primarily used as a demonstrator if the manufacturer's warranty was activated, and does not need to consider the number of miles it was operated in this capacity.

Second, WATDA takes issue with the definition of Junk Vehicle since it adds two categories to the statutory definition, and these categories would apply only to motor vehicle dealers. They point out that the additional categories are too vague and provide no objective criteria for determining whether a vehicle falls within one of these categories.

The Department has the authority under s. 342.34(3m), Stats., to "promulgate rules specifying the conditions under which a vehicle shall be considered incapable of operation or use on the highway." The Department has done this in ch. Trans 149. Rather than put the definition in another place, the Department will make reference to ch. Trans 149 in a note to s. Trans 139.04(5)(c).

Third, WATDA requests a different definition for "rebuilt salvage" that includes any repaired vehicle that has ever had a salvage notation on its title or, when less than 7 years old, met our statutory definition of a salvage vehicle.

The Department's proposed definition limits the term to vehicles that have had a salvage notation on their title. Using the reasonable care standard, it does not seem reasonable to expect a dealer to know that a vehicle that never had a salvage notation on its title may have met our statutory definition of a salvage vehicle at some point in its history. Rather, in this case, the more significant disclosure would be made with the "Repaired Damage" disclosure under the Used Vehicle General Condition category.

Finally, WATDA requests a definition for "water damaged vehicle" to include any vehicle with material damage from water, including vehicles that meet the statutory criteria for the flood damaged title brand. According to their testimony, "damage is 'material' if a reasonable person would attach importance to its existence or if a seller knows or has reason to know that a buyer would regard it as important." And they provide a citation to case law to substantiate this.

The Department proposes a definition that means a vehicle damaged by water to any extent less than the flood damaged threshold for branding. This is consistent with the current rule provisions for advertising and disclosure which require its disclosure regardless of the extent of damage. The Department agrees that the reasonable care standard should apply and will incorporate the condition that damage is "material."

Inspection standard. WATDA requests that the term "reasonable care" be defined in terms of what is generally done to better convey that special circumstances might require more. They also felt that the current language "...which shall consist of, but is not limited to,..." was too open-ended.

The Department proposes a two-part definition to the term "reasonable care" that defines it both in terms of a standard for vehicle inspections and a standard for records inspections. In both cases, it limits the standard to specific actions unless circumstances specified in the definition require more. The term reasonable care will appear in s. Trans 139.04(4), (5) and (6) and be defined in s. Trans 139.04(2).

Disclosure of repaired damage was generally accepted although WATDA and individual dealers preferred that radiator support not be listed since, alone, it wouldn't be considered significant damage, yet would require the disclosure.

The Department agrees that, by itself, repaired damage to the radiator support would not be an indication of material damage. In addition, the Department is adding reference to electrical defects to clarify that these are included in the disclosure requirement of existing damage and defects.

Junk Vehicles. One salvage dealer requests that the rule clarify that only licensed salvage dealers can sell junk vehicles or dismantle the vehicle and sell parts. Without a salvage license, retail motor vehicle dealers can only sell junk vehicles to licensed salvage dealers or dismantle the vehicle for parts to use on vehicles they own and offer for sale.

The Department agrees to add a note to s. Trans 139.04(6)(c) explaining that only licensed salvage dealers can sell junk vehicles or parts. It will be necessary to expand the applicability provision of the rule to include motor vehicle salvage dealers.

Buyers Guide. WATDA requests that a dealership may display a buyers guide prepared by an authorized employee of an affiliated dealership sharing the same majority ownership or of a predecessor dealership at the same location. They also request that a service technician be required to sign the guide to be more accountable.

The Department agrees to allow a dealership to display a guide that was completed by another dealership if the two dealerships share majority ownership or was completed by a predecessor dealership at the same location.

Rather than requiring the signature of the person conducting the vehicle inspection, the Department will propose to require the printed names of persons conducting both the vehicle inspection and records inspection on the guide. This information will be more useful to investigators conducting inspections. This information could be valuable to consumers who may wish to pursue legal action on their own. It does not preclude the dealership from creating their own form for a service technician to sign if they wish. The guide will require only the one signature of the dealer or a licensed representative. They certify with their signature that the information on the form, including the names of the inspectors is true and accurate.

Title brands. WATDA requests that the list of both vehicle history and title brand disclosures be all inclusive so dealers don't have to guess at what is important. Brands should be limited to those specifically listed in the statutes in s. 342.10(3).

The Department is proposing providing a definition of reasonable care to help the dealer know what is expected in terms of vehicle and history disclosures. The Department is proposing that brand disclosures also be held to the reasonable care standard. A dealer could have knowledge of brands other than those specified in s. 342.10(3), Stats. If they do, they must be disclosed. The Department heard testimony regarding disclosing the brand "previously titled in..." another state. The Department believes this information is material because it is reasonable that the consumer would want to know where the vehicle came from, it gives an indication of how available additional information would be, and it indicates the climate where the vehicle was operated. The Department has been recording this information on vehicle titles since 1983. A consumer deserves to know before they get their title that this information will appear on their title. Any brand that will appear on the new title is material because the Department believes that is reasonable for a consumer to want to know this before they receive their title for the vehicle. The requirement to disclose vehicle history, use and title brands will be qualified with the term "material," to help the dealer understand what is important. The Department proposes adding a definition of the term "material."

Vehicle description. WATDA as well as the smaller scale dealers request the removal of engine size on the grounds that it is too difficult to determine and that it is the consumer's responsibility to find out if it matters to them.

WATDA requests that "asking price" be changed to "price" to discourage consumers from negotiating on price.

There are many sources of engine size available to the dealer, including the EPA label under the hood, graphic display on the engine of body, guide books and software that quickly identify engine size with the 5th VIN character. The Department proposes qualifying language so that when engine size is determinable it must be disclosed and will add a note to explain that "NA" should be inserted on the Guide when engine size is not determinable.

The Department agrees to refer to "price."

Warranty information. WATDA requests that the "AS IS" disclaimer be removed since it may mislead consumers into thinking they have no rights and because some courts could construe its meaning to create a warranty. Another dealer requests that the disclaimer be more concise and limited to no dealer liability.

The Department agrees to remove the additional language.

Unfair practice standard. Representatives of both dealer and consumer interests request removal of the 30 day reporting limit on items improperly reported by the dealership. WATDA requests more flexibility for circumstances.

Center for Public Representation thought consumers should have more time to discover these problems. Further, they recommend that dealers have a specified time within which to make or pay for the repair necessary to meet the condition as it was disclosed.

The Department agrees to remove the 30 day reporting limit. And the Department agrees to impose a 30 day limit on the dealer to remedy or make a good faith effort to remedy items improperly reported. The Department is also adding a statement regarding the buyer's responsibility to report a problem to the dealer within a reasonable time of discovering the problem and make the vehicle available to the dealership.

Exclusions to disclosure requirement. One dealer specializing in older vehicles requests that vehicles exempt from odometer disclosure be likewise exempt from the buyers guide disclosures.

WATDA requests that current Department policy be codified to include the exemption for leased vehicles being sold to the lessee or agent of the lessee who was also the driver.

The Department cannot agree to exclude vehicles 10 years old and older. Consumers of older model year vehicles deserve all the same protections afforded by disclosure. Disclosure does not mean the dealer has to make repairs to the vehicle. The consumer, however, needs to know the vehicle's condition. The Department agrees to add the exemption for leased vehicles sold to the lessee or agent of the lessee who was also the driver.

Odometer statements. WATDA requests that dealers be allowed to show photocopies of titles and odometer disclosure records.

The Department agrees to allow photocopies of both titles and odometer records to prospective purchasers. Originals must be provided to the purchaser. It is the Department's hope that dealers will find it easier to show the photocopies so more prospective purchasers will have this information to make their decisions to purchase.

A national television news program broadcast a story on February 7, 1997. The story criticized Wisconsin dealers for failing to make repairs relating to manufacturer recalls. Subsequent to this broadcast, the Department and WATDA agreed to include a provision in ch. Trans 139 specifying dealers' responsibilities to notify purchasers of unperformed repairs, or to make the repairs, relating to manufacturer recalls.

Additions to Trans 139. The Department prepared a list of additional items to include in the ch. Trans 139 rule change initiative. WATDA offered testimony on these as well.

First, WATDA supports a change to allow the use of list prices and pricing guides to advertise comparative savings of demonstrators and executives. Dealers are now permitted by law to compare new vehicle selling prices to MSRP. This proposed change would allow similar comparisons to be made for demonstrator and executive vehicles.

The Department agrees to this change and will further clarify the intent of this provision by replacing the term "new motor vehicle list prices" with "manufacturer suggested retail prices".

Second, WATDA supports a change to repeal the prohibition against using the term "repossessed" in advertising.

The Department agrees to remove this provision by repealing s. Trans 139.03(6).

Third, WATDA supports a change to permit a salesperson to list the phone number or electronic mail address of his or her home on a business card. While they oppose allowing media advertising of home telephone number or electronic addresses, they see no harm in allowing the information to be printed on business cards.

The Department agrees to this change with the addition that this information be in addition to the business telephone number and address.

WATDA proposes making a number of changes to s. Trans 139.05 relating to the motor vehicle purchase contract. Most of these items are outside the scope of this rule making. One item, recreating the warranty disclosures to be similar to those required on the used vehicle buyers guide is directly related. This makes the warranty disclosures on the purchase contract clearer and more concise. The Department agrees to this change.

From the list of additional items to include with the rule change, the Department proposes the following items to bring the rule up to date with current Department policy:

Require vehicle history and use disclosures in wholesale transactions. It will be necessary to expand the applicability provision of the rule to include wholesale auction dealers as they are the consignment sellers in many wholesale transactions.

Require disclosure of both chassis and finished vehicle model year for second stage and converted vehicles, new or used, on both the Wisconsin Buyers Guide and the purchase contract.

The Department is proposing to add two more definitions for vehicle history and use disclosure. Since this rule making began, 1995 Wis. Act 329, the Wisconsin motor vehicle leasing law, took effect October 1, 1996. This Act includes a definition of a consumer lease. It would be useful for ch. Trans 139 to provide definitions of "lease use" and "rental use" to clearly distinguish between these two terms.

Finally, WATDA proposes taking this opportunity to amend the following provisions in s. Trans 139.05, having to do with the motor vehicle purchase contract:

1. Allowing dealers to accept additional offers when a sale is pending, if appropriate disclosures are given in writing. Amend and renumber 139.05(1)(b).
2. Allowing permissible contract changes to be made by notation and initials, in a designated change and acceptance area on the face of the contract or by a rewritten purchase contract that supersedes the original. Amend and renumber 139.05 (1)(c).
3. Providing for a definite delivery date as an alternative to the current anticipated delivery date and regulating the manner in which a purchaser must be notified that a vehicle is available for delivery and how long after such notification a purchaser may be required to accept delivery. Repeal and recreate 139.05(2)(e).
4. Adding to the list of components of the price due on delivery that must be referenced in a purchase contract, the following: total MSRP (new vehicles in stock only), base MSRP and MSRP of manufacturer installed options (new vehicles not in stock), dealer markup over MSRP (new vehicles only), price stated on buyers guide (used vehicles only), dealer installed options, vehicle service contracts and other add-ons, dealer discount, lease vehicle net equity, and lien pay-off (new and used vehicles). There has been some question whether a dealer violates s. Trans 139.05(2)(g) by inserting a base price that is higher than MSRP in order to show a higher dealer discount or trade-in allowance. This is meant to clarify what is required. Amend 139.05(2)(g).
5. Clarifying that dealers may use an addendum to the purchase contract in referencing the MSRP for manufacturer installed options for new vehicles not in stock. This allows dealers to use computer generated listings of manufacturer installed options on new vehicles not in stock as attachments to the purchase contract rather than requiring that this information be handwritten or typed on the contract. New vehicles in stock have this information prominently displayed on the Monroney label so itemization of MSRP for manufacturer installed options is not required. Amend 139.05(2)(g).
6. Requiring that the fact that the availability of a manufacturer rebate is conditioned upon the vehicle's or customer's eligibility be conspicuously disclosed on the face of the contract. If a conditional rebate is not applied at the time of delivery, the

purchaser will have the right to cancel the contract without penalty. Amend and renumber 139.05(2)(g)1.

7. Regulating adjustments to the amount due on delivery when the stated amount to satisfy a security interest in a trade-in vehicle is an estimate. This provides for situations when the pay-off figure on the trade-in vehicle is not known at the time the purchase contract is entered. The amount due on delivery is subject to change. If the adjustment increases the amount due on delivery by an amount that is greater than three times the average monthly payment under the credit agreement, the purchaser may cancel without penalty. Create 139.05(2)(g) 2.

8. Requiring dealers to satisfy a security interest in a trade-in vehicle within 7 business days of delivery of the purchased vehicle. Create 139.05(2)(g) 3.

9. Requiring the placement of the specific reference to a penalty for non-acceptance of the vehicle directly above the purchaser's signature. This makes it more conspicuous. Amend 139.05(2)(i).

10. Requiring a dealer to either (a) cancel a purchase contract within 10 business days of its execution if the terms disclosed in the contract cannot be obtained for the customer, or (b) be bound to delivery of the vehicle on those terms. This removes any confusion about the dealer's obligation to provide the vehicle on the stated credit terms. The current language obligates the purchaser to finance the vehicle purchase on the disclosed credit terms if they are available at the time of delivery. It's unclear whether the dealer has an obligation to make those terms available. Create 139.05(2)(j)1.

11. Allowing a dealer to cancel a purchase contract in which credit terms were not originally offered and disclosed, if the purchaser fails to accept offered credit terms within 10 business days of their written offer and disclosure. This allows the dealer to disclose credit terms in writing to the purchaser between the time the contract is signed and the time the vehicle is available for delivery, rather than having to wait until the vehicle is delivered. Create 139.05(2)(j)2.

12. Allowing a dealer to cancel a purchase contract in which credit terms were not originally offered and disclosed if, after the definite or anticipated delivery date stated in the contract and the vehicle being available for delivery, the purchaser fails to enter into a consumer credit agreement for the purchase of the vehicle within 5 days after receiving written disclosure of the credit terms. The current rule is silent on how long the dealer must wait for the purchaser to decide whether or not the credit terms are acceptable after the vehicle is available for delivery. Amend and renumber 139.05(2)(j)3.

13. Clarifying that a purchase contract that is subject to the purchaser obtaining acceptable financing at the creditor of the purchaser's choice may provide that, if the dealer does not receive written notice that the purchaser has obtained acceptable financing by the specified date, the contract will be void. This codifies a current practice. Amend and renumber 139.05(2)(j)3.

14. Creating a provision for requiring the return of down payment, deposit or trade-in title to a purchaser by personal delivery or mail within 3 business days if the purchase contract becomes void or is canceled for any reason other than the purchaser's breach or failure to perform. It retains the requirement that these items be returned to a prospective purchaser within two hours if an offer to purchase is not accepted by the dealer. This creates a uniform provision that applies generally rather than dealing with it in different places, and therefore can be deleted from other places where it is mentioned. Repeal and recreate 139.05(3).

15. Clarifying that contract price may be adjusted for any local, state or federal tax change. Currently, the tax change exception to the price protection rule does not cover local taxes and is limited to tax rate changes. Amend 139.05(5)(b)3.

16. Excluding from the 6% rule governing new vehicle damage disclosures, damage to moldings and audio equipment when replaced by identical manufacturer's original equipment. This would make dealers' right to reject vehicles delivered from the factory with damage consistent with their responsibility to disclose damage to a prospective purchaser. Amend 139.05(6).

17. Recreating the reference to the Wisconsin DOT Dealer Section to emphasize that purchasers should attempt to resolve problems with the selling dealership before contacting DOT. Repeal and recreate 139.05(10).

18. Clarifying that a used vehicle exempted from inspection and disclosure requirements in 139.04(6)(c) may be sold without prior inspection and disclosure. Amend 139.05(11).

19. Providing a definition for "lease vehicle net equity" which can be referred to on the purchase contract. Create a subparagraph in 139.02.

The Department is not considering these requests with this rule making. These sections of ch. Trans 139 were not included in the hearing draft and were not presented at the hearings. They are beyond the scope of this proposal and will be considered for separate rule making.

(c) List of Persons who Appeared or Registered at Public Hearing.

1. David Williams, representing Wis. Auto and Truck Dealers Association
2. James Tolkan, representing Wis. Auto and Truck Dealers Association
3. Stephen Meili, representing Center for Public Representation Consumer Law Clinic
4. Jordan Hemaidan, representing Center for Public Representation Consumer Law Clinic
5. Michael Glowacki
6. Steve Sperry, representing Sperry's Auto Sales of Wyocena
7. Ron Margis, representing Family Auto Center of Fond du Lac
8. Dave Glaessner, representing Columbus Car Center of Columbus
9. Harold Fleenor, Jr., representing Auto Insight of Milwaukee

10. John Michaels, representing Auto Insight of Milwaukee

List of Additional Persons who Submitted Written Testimony:

1. David Staber, Cadott Auto Recyclers and Sales Inc., Cadott
2. Loraine L. Larson, Park Lawn Inc., Beaver Dam
3. Larry Bushman, Goodmorning Advertising Service Inc., Whitewater
4. John P. Darling
5. Harold Christensen, J & H Christensen Printing Company, Palmyra
6. Clay White, Center for Consumer Affairs, UW Milwaukee, Milwaukee
7. Cindy Osenga
8. Gene Atkinson, Atkinson Auto Sales, Portage
9. James L. Brown, Wisconsin Consumer League, Milwaukee

(d) **Response to Legislative Council Recommendations.** All of the Legislative Council recommendations have been incorporated into the proposed rule.

(e) **Final Regulatory Flexibility Analysis.** No regulatory flexibility analysis was prepared since the proposed rule will have no adverse effect on small businesses beyond any effect imposed by the statutes.

IMPORTANT CONSUMER INFORMATION

The Guide

Dealerships complete the Wisconsin Buyers Guide to report the existing condition of the used vehicle. Information on the Guide is based on what the dealership can find using *reasonable care*. The Guide cannot tell you everything you need to know. Test drive the vehicle. Have your own expert check the vehicle, if the dealership allows.

The Reasonable Care Standard

Dealerships are required to test drive the vehicle and to inspect the interior and exterior of the vehicle including under the hood and under the apart (except brakes) or run tests unless necessary to diagnose apparent symptoms.

Dealerships are required to report information they get from manufacturer and auction notices, prior owner documents and disclosures, and their own vehicle inspection and repair records. Dealerships are not required to contact prior owners or get records of previous titles unless necessary to clear up inconsistent or questionable information that is apparent.

Vehicle History and Title Brands

A vehicle's past may affect its performance, warranty, and value. Using *reasonable care*, dealerships report vehicle history, use and permanent brands that are on the title or will be on the next title as required by § 342.10 Wis. Stats.

Information on the Title

- Be sure to read both sides of the title before you sign a purchase contract. Look more closely at a vehicle if the title shows:
- Mileage is not actual
 - Title brands describing important vehicle history
 - Many owners since last title was issued
 - A dealership as titled owner.

The vehicle's previous owner, whose name and address are on the title, may provide useful information. The dealership will give you the name and address of the prior owner if you ask for it.

Contract Agreements

You may agree to terms, such as warranty coverage, that differ from terms on the Guide. What you agree to on the purchase contract is final. Any important conditions or contingencies should be written on the contract to prevent misunderstandings.

Obligation to Remedy Undisclosed Problems

The disclosures on this guide are not a warranty. However, it is an unfair practice for a dealership to refuse to remedy any problem that should have been disclosed on the Guide if the problem:

- Existed at the time of sale
- Could have been found using *reasonable care*
- Was not disclosed, and
- Is reported to the dealer when discovered and the vehicle is made available to the dealership.

Manufacturer Recalls

Used vehicles may be the subject of manufacturer recalls that have not been performed. You may want to determine whether there are any unperformed recalls before you buy a vehicle or take delivery. Many manufacturers have a telephone number which may be called to obtain this information. For further information about how to inquire about recalls for this vehicle, ask the dealership or contact the Wisconsin DOT Dealer Section at the address or telephone number shown below.

Your Records

You will get a copy of the Guide if you purchase a vehicle. Keep copies of all documents and everything you sign.

Division of Motor Vehicles, Dealer Section
licenses Wisconsin dealerships and administers TRANS 139, Wis. Adm. Code which requires the Guide.

Ask your dealership for a *Wise Buys* brochure which explains dealer and consumer responsibilities, published by:

Wisconsin DOT Dealer Section
4802 Sheboygan Ave., Room 806
P. O. Box 7909
Madison, WI 53707-7909

Consumer Assistance: (608) 266-0765

DEFINITIONS OF WHAT IS INSPECTED

Brakes System includes rotors, pads, drums, shoes, parking brakes, and fluid leaks.

Bumpers includes other crash protection features. **Charging system** includes battery, alternator and voltage regulator.

Cooling System includes hoses, radiator, heater core, thermostat, fan, and water pump.

Doors, Hoods and Trunk Lid includes hinges, locks and latches.

Drive Train includes the following, as equipped: transmission, transaxle, differential, U-joints, CV joints, transfer case and clutch.

Emission Equipment is listed on underhood EPA label. Vehicles must pass a state emission test within 45 days of sale if:

- kept in mandatory testing counties, and
- GVW rating is 14,000 lbs. or less, and
- 6 model years old or older

Fluid levels low includes the following, as equipped: engine, transmission, differential, transfer case, radiator, battery, brakes, power steering, and windshield washers. Does not include AC or maintenance free battery.

Frame or Structural Portion of Unibody includes damage, weakened by rust, repairs, alignment.

Fuel System includes tank, pump, carburetor or injector system.

Lights include all exterior lights.

Power accessories include the following, as equipped: windows, locks, seats, mirrors, or antenna.

Restraining Devices and Seats include belts, and air bags.

Signs of excessive oil consumption includes evidence of oil leaks, abnormal exhaust smoke, burnt oil odor, or piston ring blowby.

Starting system includes ignition switch, solenoid, starter, pinion, and ring gears.

Steering Components includes proper alignment.

Changes made to the Proposed Wisconsin Buyers Guide

Description	Trans 139 Changes
1. Remove "Asking Price" and replace with "Price"	139.04(6)(a)3
2. Move Stock# under price, Transmission below drive type, VIN under Year, Make, model and add "Dealership Name" below VIN	None
3. Modify text below form name	None
4. Enlarge "Odometer Read", remove "no tenths" and move "exempt" to end	None
5. Delete text under "AS IS - NO WARRANTY" except "None stated or implied"	139.04(6)(a)4
6. Remove all check off ovals and change all check offs to boxes	None
7. Remove "Problem" from all sub-headings under Used Vehicle General Condition	None
8. Add "problem" to check-off items under Used Vehicle General Condition as appropriate	None
9. Under Engine change disclosure to "Signs of excessive oil consumption"; "Signs of cracked block or head or blown head gasket; delete "warped head"; delete "bucks	None
10. Delete "radiator support" from repaired damage	139.04(4)
11. Delete "Security system" from Other Equipment disclosures	None
12. Modify "Spare tire or jack missing" from Other Equipment disclosures	None
13. Modify text under "Vehicle Equipment Requirements"	None
14. Remove "Print Name" and "Dealership Name" and replace with "Vehicle Inspector - Print Name" and "Records Inspector - Print Name".	139.04(6) (intro)
15. Change dealer to dealership except where dealer principal is intended.	Various
16. Add subcategory under "Brake system" for "Parking Brake"	None
17. Modify explanation area for items marked "YES" or "Not Legal"	None
18. On the back, delete "Items Improperly Reported", and "Problems After Purchase" replace with "The Reasonable Care Standard" and "Obligation to Remedy Undisclosed Problems"; make reference to <i>Wise Buys</i> as lead-in to DOT address, "Consumer Assistance" in front of phone number.	None
19. On the back, change "The Inspection" to "the Guide", modify text and include paragraph under "Other Information"	None
20. Change definition of "Brake System" to "includes rotors, pads, shoes, parking brakes and fluid leaks	None
21. Add to definition of "Fluid Levels Low", "Does not include AC or maintenance free battery	None
22. Modify definition of "Frame" to specify "weakened by rust	None
23. Change defined term Excessive oil consumption indicated" to "Signs of excessive oil consumption"	None
24. Add ABS disclosure under "Other Equipment	None
25. In Title Brand area, box off "Previously title in ___"	139.06(6)(a)1
26. In Transmission area, number of speeds refers to "Manual" only	None

Justifications for Buyers Guide changes proposed and not made:

1. Under "Vehicle history" add checkoff for "Goodwill (pre-lemon) buy back

Such a disclosure may discourage dealers from buying back vehicle and may discourage future purchasers. Any substantial problem with the vehicle will be disclosed as a "General Condition" or "Vehicle Equipment" disclosure. If the information is material, the dealership would be expected to disclose it. For example, if a consumer states that they do not want to buy a dealer buy back, the dealer would be required to disclose that information.

2. Under "Odometer Reading" provide specific instructions to contacting the previous owner.

The suggestion to contact the previous owner as a source for additional information about the vehicle is provided on the back of the form. Placing it on the front with odometer reading suggests that this information is not accurate and casts the entire form as being unreliable.

3. "Repaired Damage" should be broken down to its individual components for disclosure.

The disclosure is **repaired damage**. It does not justify having so much space on the form and would give it undue attention.

4. "Used Vehicle General Condition" should include a disclosure for missing parts or fire damage.

If the damage is substantial, it will be disclosed under the categories given.

5. There should be a requirement to disclose adjustments made to hide a disclosable condition

It is too hard to prove the dealership's motive for making adjustments.

6. "Other Equipment" should not include air conditioning system, sound system or power accessories so only safety and drive line parts would have to be inspected and disclosed.

The department receives many complaints about the items listed under "Other Equipment", especially the power accessories.

Sound system can be operated without an owner's manual so it's relatively easy to evaluation using the reasonable care standard. It's something we often receive complaints about so consumers believe it's material.

7. "Ignition system" is too difficult to define and disclose. Engine "Changed from manufacturers specification is too difficult to determine.

The reasonable care standard applies.

8. Add to "Fluids", fluid intermixing, or discoloration.

There are no industry standards for fluid color so it would be impossible to know.

9. "Vehicle Equipment Requirements" check-offs should not be "Legal" or "Not Legal". Vehicle inspectors are not qualified to give a legal opinion.

According to 139.04(5), dealerships are required to disclose whether or not the condition of the vehicle for sale is such that it can be **legally operated** in accordance with ch. 347, Stats., and ch. Trans 305. These designations are important to convey the potentially serious consequences of traffic code violations and civil penalties if property damage or personal injuries occur.

10. Dealership name does not belong on the form.

For enforcement purposes, the department prefers to have the dealership name on the buyers guide.

11. Remove "Asking Price" and leave on the \$ in the box.

There needs to be a term that can be referred to on the purchase contract.

12. Delete "Previously titled in ____" from "Title Brands"

Dealers are required to disclose this brand if they know it will appear on the new title. It is easier to use if the information is pre-printed on the guide.

13. Insert proposed text under the heading "Used Vehicle General Condition" and replace text under heading "Vehicle Equipment Requirements"

It is not necessary to restate the "reasonable care" qualifier. Repeated use of the phrase undermines the credibility of the guide. It appears at the top of the guide directly beneath the title and it's explained on the back. The entire guide is based on reasonable care.

14. Delete square check boxes and column headings for "Used Vehicle General Condition" and "Vehicle Equipment Requirements" leaving one row of ovals to check only when there is a problem.

A single check makes fraudulent disclosure too easy since adding the check after the fact is too easily done. It also leaves open the argument that the item was unintentionally missed. The Yes/No check is most easily understood. Legal/Not Legal adequately conveys the potential for traffic code violations.

15. Add "Inspector's Signature"

The form requires only the one signature of the dealer or licensed representative of the dealership. The printed names of both the vehicle inspector and the records inspector is a more valuable piece of information for both the department and the consumer.

16. Engine size is too often undeterminable so should be removed from the label.

Engine size is determinable more often than not. When it's not, insert "NA" on the Guide as instructed in 139.04(6)(a)3.

17. Various negative comments about Seal4, the material chosen to print the guide on.

The department recommends Seal4 as the specified product on which to print the guide because of its superior adhesion, easy removal, professional appearance and excellent track record with the federal Buyer's Guide and MSRP labels..

Testimony in Opposition:

1. There is no problem with the current transfer tape.

The department's experience indicates that there is a problem with the current transfer tape. When the current label falls off the vehicle the dealership is in violation of the rule and the consumer loses valuable information they need to make an informed purchasing decision. These consequences are too important to ignore. The department's search for a solution lead to Seal4.

2. It's too expensive.

The department shared pricing information before and at the hearings. No dealership offered testimony suggesting that the form was too expensive. This comment was offered by a forms vendor. Prevailing dealer attitude indicated that they felt the higher price was justified by the added value. Anecdotal evidence suggests that dealers routinely go through more than one label per vehicle now.

3. Forms vendors should have many sources of material available to them. Specifying Seal4 eliminates all competitive sources for this product and would take orders away from Wisconsin printing companies.

In order to have consistency between all licensees, the department has to specify the guide format and material. By guaranteeing a certain volume of usage, the cost to produce the form is reduced.

4. The patent for this product is held by a company located in the state of Oregon. Wisconsin jobs will be lost.

It's a patented product and our volume of usage isn't high enough to support another supplier. The volume of forms produced in Wisconsin is unlikely to support whole positions.

Testimony in Support:

1. Seal4 adheres on all four sides (like the MSRP label on new vehicles) and is easily removed for the buyer's records. The current adhesive is not durable enough to withstand the wear and tear of windows going up and down, wind and Wisconsin's climatic extremes.

2. It should never be necessary to replace a guide because it was damaged or fell off as is often necessary with the current label. This justifies a higher price.

3. To the issue of dealers getting a fair price, it should be noted that there are various distributors who can sell the product to dealers. Each one can negotiate a price with the Seal4 manufacturer and set their own price to sell to dealers. There is no reason why the free market would not prevail.

4. If the product does not live up to expectations, DOT has the authority to change the form specification without having to go through the rule making process.

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Testimony in Department

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