

Chapter Trans 140

MOTOR VEHICLE DEALER FINANCIAL ELIGIBILITY AND
BOND CLAIM REQUIREMENTS

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Subchapter I — Dealer Licensing Financial Eligibility
Requirements

Trans 140.01 Purpose and scope. (1) **STATUTORY AUTHORITY.** As authorized by ss. 110.06 (1), 218.01 (5), 218.25, and 227.11, Stats., the purpose of this chapter is to establish the department's administrative interpretation of s. 218.01 (2) (b), (h) and (j) and (3) (a) 1 and 7, Stats., relating to the financial qualifications of motor vehicle wholesaler and dealer license applicants, s. 218.11 (3) and (6) (a) and (g), Stats., relating to the financial qualifications of mobile home dealer license applicants, s. 218.21 (1), (1m), (4) and (6), and 218.22 (1) and (3) (a) and (g), Stats., relating to the financial qualifications of motor vehicle salvage dealer license applicants, and s. 218.41 (2) (c) and (3) (a), Stats., relating to the financial qualifications of moped dealer license applicants.

(2) **APPLICABILITY.** (a) This chapter applies to any sole proprietorship, partnership or corporate entity applying for or holding a Wisconsin dealer's license under any of the statute sections cited in sub. (1).

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

(b) The provisions of this subchapter do not apply to an applicant for a motor vehicle dealer license who submits a bond in accordance with s. 218.01 (2) (j).

Note: Forms used in this chapter are: MVD-2195 Financial Statement, MVD-2077 Motor Vehicle Dealer, Mobile Home Dealer or Salesperson Bond, MVD-2077A Moped Dealer

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Bond, MVD 2511 Motor Vehicle Dealer Bond and MVD 2497 Motor Vehicle Salvage Dealer Bond.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85; cr. (2) (am) and am. (2) (b), Register, July, 1986, No. 367, eff. 8-1-86; correction in (1) made under s. 13.93 (2m) (b) 7, Stats., Register, December, 1987, No. 384.

Trans 140.02 Definitions. In this chapter:

(1) "Discounted" means an asset which is not considered at full value when determining the financial statement net worth.

(2) "Financial statement" means a balance sheet showing assets, liabilities, and net worth.

(3) "Intangible asset" means an asset which does not have a readily determined value, such as goodwill, and is not generally offered for sale.

(4) "Major liability" means a liability equal to or greater than 10% of the total liabilities listed on the financial statement.

(5) "Net worth" means the difference between the asset and liability values on a balance sheet. Negative net worth is the excess of liabilities over assets.

(6) "Pro-forma statement" means a statement presented anticipating some event or events which will occur in the future.

(7) "Substantial portion of the assets" means a value greater than 30% of all assets.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.03 Balance sheet information. (1) All license applicants shall submit a balance sheet dated not more than 90 days prior to the date of application, that is prepared in accordance with generally accepted accounting principles. A small business as defined in s. 277.016 which does no interim financial reporting may submit a balance sheet from the close of the business' most recent fiscal year. The balance sheet shall contain the following:

- (a) Assets.
- (b) Liabilities.
- (c) Net worth.
- (d) The signature of one of the corporate officers, partners, or owners.
- (e) The name of any bank or financial institution used by the applicant.
- (f) A schedule of securities owned, if any.
- (g) A schedule of all real property held, its fair market value, book value and the amount and terms of any indebtedness.

(2) Pro-forma statements shall not be accepted.

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(3) If the department determines that there has been a misstatement on a financial statement, the misstatement shall be grounds for denial or revocation of the license.

Note: Form MVD-2195 Financial Statement.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.04 Asset reporting. (1) **VALUATION.** The financial statement shall present assets in terms of historical cost or book value of assets. In lieu of a statement presented with historical cost of fixed assets or book value of assets, the department shall consider a statement presenting fair market value information of fixed assets if clearly labeled and accompanied by an appraisal report of a certified appraiser or tax appraisal.

(2) **CASH.** Whenever a substantial portion of the assets of an entity is in the form of cash, confirmation of the amount is required from the financial institution holding the cash.

(3) **RECEIVABLES.** When a substantial portion of the assets of an entity are in the form of receivables from another individual, partnership or corporation, all or part of the receivables shall be discounted in considering the net worth of the applicant. In order to evaluate the quality of a receivable, a financial statement from the individual, partnership or corporation may be required. In no case will the department discount factory receivables.

(4) **INVENTORY.** The financial statement shall include the number of units in inventory and the number of units floor planned or used for loan collateral. A GAAP presentation of inventory values would not allow for the use of a reserve account for balance sheet information compiled for external purposes. As an exception to a GAAP presentation, the department will allow the use of a reserve account to accurately assess the value of inventory.

(5) **CERTAIN ASSETS NOT TO BE CONSIDERED.** The department shall not consider the following assets in evaluating the financial statement of an applicant:

(a) As specified in s. 815.20, Stats, equity in homestead property up to \$25,000;

(b) As specified in s. 815.18, Stats., items of personal property which are exempt from execution;

(c) Any intangible asset values;

(d) Leasehold improvements; and

(e) All other assets subject to prior liens, security agreements, or other pledges.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.05 Liability reporting. (1) **REPORTING.** All liabilities and contingent liabilities shall be reported. The terms, amount and conditions of any major liabilities shall be separately scheduled. This schedule should show the names of individuals or institutions who hold the debt, the amount of debt, and the terms of repayment. A list of customers and the amounts on deposit with the dealer should be attached to the financial statement.

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

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.06 Net worth reporting. (1) **TREASURY STOCK.** Treasury stock held by a corporation shall be reported separately on the balance sheet and clearly labeled as treasury stock.

(2) **PREVIOUS PROFIT.** Profit from the previous period of operations shall be reported separately in the net worth section of the balance sheet.

(3) **NEGATIVE NET WORTH.** A financial statement with a negative net worth is evidence of lack of financial ability to conduct business and the license shall be denied or revoked.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.07 Types of entities. (1) **SOLE PROPRIETORSHIPS.** A sole proprietorship may report the entire value of assets jointly owned by the sole proprietor and by one or more persons on its financial statement. The financial statement shall be signed by the sole proprietor.

Note: An example of a joint asset would be a home owned by the sole proprietor and his or her spouse.

(2) **PARTNERSHIPS.** Partnerships shall submit a statement for the partnership as a whole and individual statements for each of the general partners. If the partnership agreement provides for anything other than an equal sharing by the partners, it shall be prominently noted on the statements. The provisions of sub. (1) relating to the listing of jointly owned assets also apply to this subsection.

(3) **CORPORATIONS.** (a) A financial statement is required for the corporation which will hold the license. A financial statement of a controlling corporation, parent corporation or an interlocking corporation may be submitted, but shall not be substituted for the financial statement of the applicant.

(b) The individual who holds the office of president of a corporation may not also hold either the office of secretary or vice president, as specified by s. 180.41 Stats.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.08 Copies required. Salvage dealers, motor vehicle wholesalers, and moped dealers shall file one copy of their financial statement with the department. All other dealers shall file their financial statements in duplicate. The department shall forward the duplicate copy to the colicensor, the office of the commissioner of banking.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.09 General requirements. (1) **OPERATING STATEMENT.** If required by the department, the applicant shall submit an income statement or other financial statement. The department may require a dealer to submit updated financial information during the license year if questions arise regarding the dealer's financial condition.

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

NET WORTH CRITERIA

| Dealer Type | Annual Vehicle Sales Volume | | | | |
|--------------------------|-----------------------------|----------|----------|-----------|-----------|
| | New | 1-10 | 11-50 | 50-150 | Over 150 |
| New Auto or Truck | \$15,000 | \$20,000 | \$25,000 | \$ 50,000 | \$ 75,000 |
| Used Auto or Truck | \$10,000 | \$10,000 | \$15,000 | \$ 30,000 | \$ 35,000 |
| Mobile Home | \$25,000 | \$25,000 | \$50,000 | \$100,000 | \$150,000 |
| Motor Vehicle Salvage | \$ 5,000 | | | | |
| Motor Vehicle Wholesaler | \$ 7,500 | \$ 7,500 | \$10,000 | \$ 20,000 | \$ 25,000 |
| Moped and Motorcycles | \$ 7,500 | \$ 7,500 | \$10,000 | \$ 20,000 | \$ 25,000 |

(b) The department may deny the license of an applicant who fails to meet the net worth criteria set out in para. (a).

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Trans 140.10 Bonding. (1) **FORM.** As provided by s. 218.02 (2) (h), Stats., a surety bond is the only acceptable form of security. The surety bond shall be filed on a form prescribed by the department and issued by a bonding company licensed by the State of Wisconsin.

Note: Form MVD 2077 Motor Vehicle Dealer, Mobile Home Dealer, or Salesperson Bond, MVD 2077A Moped Dealer Bond and MVD 2497 Motor Vehicle Salvage Dealer Bond.

(2) **WHEN REQUIRED.** In accordance with s. 218.01 (2) (h), Stats., the department may require a surety bond of not less than \$5,000, nor more than \$15,000, when the applicant does not meet the net worth guidelines specified in this chapter. The amount of the bond required is determined by the dealer's financial statement, the sales volume, or anticipated sales volume of the dealer, and the financial history and stability of the dealer.

Note: Form MVD 2077, MVD 2077A and MVD 2497.

(3) **WHEN OPTIONAL.** An applicant for a motor vehicle dealer license may meet the financial responsibility requirement of licensing by submitting a surety bond in lieu of a financial statement. That bond shall be in an amount not less than \$25,000, as required by s. 218.01 (2) (j) and 218.21 (4), Stats.

Note: Form MVD 2511, Motor Vehicle Dealers Bond.

History: Cr. Register, March, 1985, No. 351, eff. 4-1-85.

Subchapter II — Claims Against Bonds of Department Licensees

Trans 140.20 Definitions. The terms used in this subchapter shall have the same meanings as in ch. 218, Stats., except as specifically provided below:

(1) "Bonded licensee" means a person licensed by the department under ch. 218, Stats., who furnishes a bond under conditions provided in s. 218.01 (2) (h), Stats., including bonds furnished in accordance with ss. 218.01 (2) (bb), (h), or (j), 218.11 (3) or (6) (g), 218.21 (4) or (6), or 218.33 (1), Stats.

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

Note: See ch. 893, Stats., and cases thereunder, governing the applicable statutes of limitation, and determination of the date when a cause of action accrues.

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

(3) "Financial institution" means any person or organization authorized to do business under any state or federal law relating to financial institutions, including, without limitation, banks and trust companies, savings banks, building and loan associations, savings and loan associations, credit unions and sales finance companies. A credit corporation or similar financing organization of a motor vehicle manufacturer, factory branch, distributor or dealer is a financial institution. Any person who floor plans motor vehicles is a financial institution.

(4) "Floor plan" means to make a financing arrangement for the lending of money to a motor vehicle dealer so that he or she may purchase a motor vehicle to include in his or her inventory; the loan being secured by the motor vehicle while in the dealer's possession and to be repaid when the motor vehicle is sold.

(5) "Motor vehicle" shall have the same meaning as s. 218.01 (1) (m) and includes mobile homes as defined by s. 218.01 (2). For the purposes of this subchapter, a moped as defined by s. 218.40 (2) is also a motor vehicle.

(6) "New motor vehicle" shall have the same meaning as s. Trans 137.03 (7).

(7) "Private person" means a person not licensed under ch. 218, Stats., and not required to be so licensed, for the purpose of the transaction from which his or her claim arises. A financial institution, or a motor vehicle manufacturer, factory branch, factory representative, distributor, distributor representative, or a motor vehicle, mobile home, moped, salvage, trailer or auction dealer or a salesperson employed by such dealer is not a private person.

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

form. If the bond form filed with the department provides for automatic renewal of the surety coverage or states that a period of more than the calendar year is covered, the beginning date shall be January 1 annually and the ending date shall be December 31 annually, until the express ending date or cancellation date is reached.

Note: The bond forms are available from the Dealer License Section, Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707.

(8) "Retail customer" means a private person buying or agreeing to buy one or more motor vehicles from the bonded licensee for the private person's personal, family or household use. A person buying or agreeing to buy a motor vehicle or mobile home to be used primarily for business or commercial purposes is not a retail customer. A private person who sells, trades, or consigns to the bonded licensee a motor vehicle used personally or by the person's family or household, and not used primarily for business or commercial purposes, is a retail customer.

(9) "Secured party" means a lender, seller or other person, whose claim is based on a transaction in which there is, or was, a security agreement creating a security interest in the lender's, seller's or person's favor, even if that interest is not sufficient to satisfy the claim. A person able to claim a lien under ss. 779.41, 779.415, or 779.43 (3), Stats., is a secured party.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.21 Allowed claims. (1) A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

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

(b) The claim rose during the period covered by the bond; and,

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

1. A salesperson license or a motor vehicle dealer license, in the case of a bonded salesperson or motor vehicle dealer, pursuant to s. 218.01 (3)

(a) 1 to 14, 18 to 21, 25 or 27 to 31, Stats.;

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

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

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

5. A moped dealer license, in the case of a bonded moped dealer, pursuant to s. 218.41 (3), Stats.; or,

6. Any other license issued by the department under ch. 218, Stats., in any other case, including that of a bonded manufacturer, distributor, distributor-wholesaler, or trailer dealer, pursuant to s. 218.01 (3) (a), Stats.

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

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

(2) The following claims shall be disallowed:

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

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

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

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

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

(f) Any claim by a financial institution or secured party.

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

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

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

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

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

(4) A claim may be allowed in part and disallowed in part.

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

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

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

1. Rescind the purchase contract and make a claim against the bond of the bonded licensee for the full purchase price of the vehicle;
2. Make a claim against the bond of the bonded licensee for the cost of a title bond prescribed by s. 342.12 (3) (b), Stats.; or
3. Make any other allowable claim for damages.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.22 Priority of claims. Allowable claims against the bond shall be assigned to one of the following priority classes:

(1) **SALESPERSON, MOTOR VEHICLE, MOPED AND MOBILE HOME DEALER BONDS.** The priority classes of allowable claims against the bond of any bonded licensee except a salvage or auction dealer, in order of their priority, are as follows:

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

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

(c) Claims of the department for title and registration fees.

(d) Claims of a distributor, distributor representative, or dealer or salesperson, excluding the claim of a secured party or a financial institution.

(e) Claims of the Wisconsin department of revenue for income taxes due from the bonded dealer upon a false or fraudulent return as certified by the department of revenue.

(f) Any other allowable claim.

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

(a) Claims arising from transactions involving the sale or purchase of a particular motor vehicle, excluding the claims of a secured party, a financial institution, the department of revenue or the department of transportation.

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

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.23 Payments on allowed claims. (1) The amount paid on each allowed claim shall be determined by the priority class of the claim. All claims in the same priority class shall be treated alike, beginning with the claims of the first priority class, as follows:

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

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

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

(d) If insufficient funds are available to pay all claims in a class, then each claim of the class shall be prorated according to the following formula:

$$\frac{\text{dollar amount of claim}}{\text{total dollar amount of claims in class}} \times \text{available funds} = \text{prorated dollar amount of claim}$$

(2) When a class of claims has been prorated because there are insufficient funds available to pay the claims of the class in full, no payments shall be made upon allowed claims of the successive priority classes.

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

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.24 Making claims. (1) Each claim shall be in writing and shall include the following:

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

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

(c) The date on which the claim arose;

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

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

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

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

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

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

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

(2) The department may adopt and provide forms for use by claimants.

Note: Copies of the form for making claims, MV-2542, Claim Against Bond of Licensee, are available from the Dealer License Section, Department of Transportation, P.O. Box 7909, Madison, Wisconsin 53707.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.25 Payment by surety. (1) The surety may, at any time, pay the amount of the bond to the department.

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

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

(4) If a surety fails to tender the amount of the bond to the state, or to make timely payment of the amount demanded as provided in sub. (3), or otherwise fails to observe the provisions of this chapter, then the department may, in addition to any other available remedy, revoke its acceptance of the surety as adequate to provide any bond of any persons bonded under any statute or rule administered by the department. The department shall notify the surety company of its intent to revoke its acceptance of the surety. The surety company may, within 30 days of

such notice, request a hearing before the secretary or his or her designee, prior to revocation of the department's acceptance of the surety.

Note: Final determinations of the department are subject to judicial review pursuant to ss. 227.15 to 227.21, Stats.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.26 Procedure for determination of claims against the dealer bond. (1) **PETITION FOR RULING.** (a) Any claim made against the bond of a bonded licensee, any request by a surety for a department determination of a claim, any notification of the department by a bonded licensee of his or her termination of business, any filing of a bankruptcy petition by a bonded licensee, or any payment of any part of a bond by the surety to the department may be regarded by the department as a petition for declaratory ruling under s. 227.06. Stats.

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

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

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

1. The name of the bonded licensee;
2. The amount of the bond;
3. The period of time covered by the bond;
4. The deadline for the submission of claims against the bond;
5. The address from which to request claims forms and to which to submit claims;
6. The date and the place for a hearing on all timely but disputed claims.

(3) **DEADLINE FOR CLAIMS.** The deadline for the submission of claims shall be 60 days after the final insertion of the published notice required by sub. (2).

(4) **EVALUATION AND INVESTIGATION.** (a) The department shall evaluate each claim received, request additional documentation or clarification from the claimant as necessary and make a preliminary determination of the allowance, amount and priority class of the claim.

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

(5) **DISPUTED CLAIMS.** (a) *Preliminary determination of claims.* When a preliminary determination of all claims received prior to the deadline for filing claims is completed, the compilation of all those preliminary determinations shall be sent to each claimant, the surety and the bonded licensee, who shall all be parties to any hearing under sub. (6). The compi-

lation of preliminary determinations may include an estimate of the amount which would be paid on each claim, in accordance with s. Trans 140.23, if the preliminary determinations are not contested.

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

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

(d) *Adoption of preliminary determinations.* If the preliminary determinations are not disputed the scheduled public hearing may be cancelled and the preliminary determinations shall be adopted by the department.

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

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

(7) **HEARING EXAMINER DETERMINATION FINAL.** The determination of the hearing examiner regarding the allowance, amount and priority class of each claim shall be the final decision of the department.

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

(b) The amount paid on an allowed claim shall be determined as provided by s. Trans 140.23.

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

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

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.

Trans 140.28 Alternative procedure for determination of claims. (1) At the discretion of the department, as an alternative to the procedures described in s. Trans 140.26 or 140.27, the department may proceed as necessary to allow any Wisconsin circuit court, or any federal court, having appropriate jurisdiction over any claim by any claimant against the bonded licensee, to hear the claims of all claimants known to the department, to determine the allowance, amount and priority class of each claim and to make awards against the bond in accordance with ss. Trans 140.21 to 140.23.

(2) (a) At the decision of the department, as an alternative to the procedures described in s. Trans 140.26 (2), (4) and (5), the department may, with the consent of the surety for the bond, designate the surety as agent for the department to solicit and receive claims and to make preliminary investigations and preliminary determinations on the allowability, amount and priority class of each claim.

(b) This section does not confer upon the surety any of the department's authority, as licensor, to demand financial information or records from the licensee. However, a surety acting under par. (a) may request the assistance of the department in obtaining such information or records.

(c) A surety acting under par. (a) shall provide notice as required by s. Trans 140.26 (2), at its own expense and in the form used by the department.

(d) A surety acting under par. (a) shall deliver its preliminary determination of claims, the findings of fact and documents upon which the determinations are based, to the department within 14 days of the deadline for claims under s. Trans 140.26 (3). The surety shall also deliver all records of its investigation of claims. At the request of the surety, the department may grant a single 60 day extension to the surety and reschedule the date of the hearing provided by s. Trans 140.26 (6).

(e) A surety acting under par. (a) shall bear all the expenses and costs of its investigation, making preliminary determinations of claims, and complying with this section.

(f) The preliminary determination of claims by the surety is not binding upon the department. The department may review and revise the surety's determinations prior to proceeding as required under s. Trans 140.26 (5).

History: Emerg. cr. eff. 10-16-85; cr. Register, July, 1986, No. 367, eff. 8-1-86.