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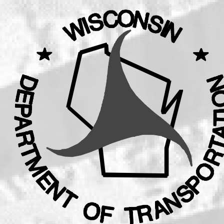
WISCONSIN DEPARTMENT OF TRANSPORTATION

Plain Dealing

A policy and administrative bulletin for licensed dealers from the Dealer Section of the WisDOT Division of Motor Vehicles

"Nothing astonishes men so much as common sense and plain dealing."

Ralph Waldo Emerson



Law and rule changes new in 2004

This special issue of *Plain Dealing* covers several major law and policy changes affecting dealerships—including changes to the motor vehicle purchase contract, dealer bonding requirements, and electronic record-keeping at dealerships. Please take time to become familiar with these law changes, so your dealership has the information it needs.

Special Edition
Our regular issue of *Plain Dealing* will follow in a few weeks.

How did it happen?

All of the law, rule, and policy changes discussed in this issue of Plain Dealing were the result of collaboration between DOT, industry and consumer interests. Trans 138 and 139 rule changes *(see page 2)* were the long-negotiated product of a team of staff from DOT and the Wisconsin Auto and Truck Dealers Association (WATDA), and incorporated additional industry and consumer suggestions raised at public hearing. All DOT rule change proposals are intensively reviewed at many levels within DOT, at public hearing, and again within the legislature before promulgation. Many analytical minds, with diverse goals, help shape a rule change. Such collaborative rule-making efforts do not guarantee that negotiators on all sides get *everything* they want, but they do promise a well-balanced outcome that stakeholders can generally support.

Changes to the dealer bonding law *(see page 8)* were initiated by WATDA. However, WATDA actively invited DOT input and incorporated DOT suggestions based on prior bond claims and DOT research about bond amounts in other states, and it is a better law as a result of the debate.

DOT's new electronic record-keeping policy *(see page 7)* responded to industry requests to modernize business practices. DOT acted swiftly to research the implications of the policy change, with a focus on easing commerce while protecting consumers. Many dealers assisted DOT by providing information about dealer business practices and by reviewing draft forms. In particular, DOT would like to thank Pete Dorsch of Dorsch Ford, Green Bay, for his enthusiastic contributions to this policy improvement. With his help, DOT got a much clearer picture of how electronic record-keeping works in a real-world dealership environment.

Inside this issue:

Trans 138-139 changes	2
Internet regulation	2
Definition of "new" vehicle	3
Motorcycle disclosure	4
Motor Vehicle Purchase Contract changes	4
Warranty changes	6
Electronic record-keeping	7
Bonding law changes	8

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Trans 138-139 changes effective March 1, 2004

After several years of collaboration with industry and consumer groups, DOT Dealer Section has finalized several administrative rule changes that improve consumer protection and better support the way dealers do business today. The changes to Trans 138—Dealership Facilities and Records and Trans 139—Motor Vehicle Trade Practices take effect March 1, 2004. The changes are listed briefly below and discussed in more depth in articles that follow:

- Dealer license required for Internet and other out-of-state sellers who deliver in Wisconsin
- Revised definition of "new" vehicle for disclosure purposes
- Required estimate of mileage for new "order-out" vehicles
- Multiple contingent contracts allowed on one vehicle
- Allowed 14 days for auction to provide title to dealer.
- Excluded molding and audio equipment from the 6% disclosure threshold
- Consignment sale changes
- Motorcycle disclosure change
- New procedure for superseded contracts
- Addendum showing components of price
- Changes to financing contingencies on contract
- New procedures for estimated trade-in lien payoffs
- Changes regarding rebates
- Warranty disclosure changes
- Time limit to satisfy trade-in vehicle liens

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License required for out-of-state sellers

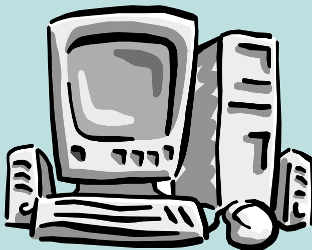
Changes to the applicability sections of Trans 138 and 139 and the definition of "sell" a vehicle, brought out-of-state sellers who sell *and deliver* vehicles to consumers within Wisconsin borders under the same regulatory control as dealerships located in the state. The law change creates substantially equal protections for consumers who buy from their local dealership or buy online for Wisconsin delivery. Internet sellers will now follow the same disclosure, contract, and record-keeping rules Wisconsin dealers are required to follow.

The rule changes the definition of "sell" a vehicle to include displaying, executing or accepting offers and "*accepting or negotiating an order to purchase a vehicle placed by fax, telephone, the Internet, mail or some other means with a person within this state, if the vehicle purchased as a result of the order is delivered to the purchaser at a location within this state.*"

Under that new definition, vehicle sales that are delivered in Wisconsin trigger the requirement for a Wisconsin dealer license. However, there is no similar requirement for out-of-state sellers to hold a Wisconsin dealer license if their customers travel out of state for vehicle delivery—those transactions are not considered Wisconsin sales subject to WisDOT regulation.

Out-of-state dealers licensed as Wisconsin dealers are exempt under the rule from facilities requirements, as long as they keep required records at their business office and make documents available to DOT on request. These exemptions were critical to the success of the new license requirement for out-of-state sellers. Any requirement that unnecessarily burdened interstate commerce would have invited constitutional challenges that could have defeated the proposal entirely and prevented DOT from bringing Internet sellers under regulatory control.

See revised Trans 138.01(2m), 138.02(10), 139.01(3)



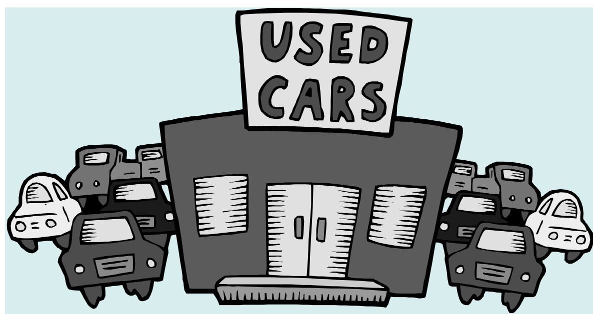
Revised Trans rules available online

Beginning March 1, copies of the revised Trans 138 and 139, Wisconsin Administrative Code, will be available for viewing and printing online at www.dot.wisconsin.gov at "Doing Business," "Dealer and Motor Vehicle Business Licenses," or send a request to *dealers.dmv@dot.state.wi.us* if you would like an electronic copy of the rules e-mailed to you. For questions about the rule changes discussed in this issue, please call the WisDOT dealer hotline at 608.266.1425 or e-mail Dealer Section at the address above.

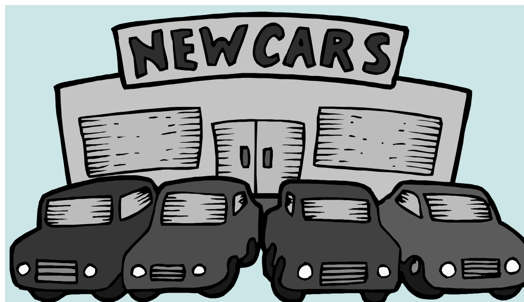
Revised definition of “new” vehicle

A change at Trans 139.02(11) reverts to a long-standing definition of “new” vehicle that was in place since the 1970’s. Under the rule, “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 200 miles for purposes other than manufacturer tests, pre-delivery tests by a dealer, dealer exchange or delivery.”

Under Wisconsin law, dealers are required to use “demonstrator” vehicles for any extensive test driving by customers or for use by dealership staff. Those vehicles must be sold as demonstrators displaying Wisconsin Buyers Guides, rather than as new vehicles. However, DOT realizes that a purchaser may want to test drive the actual vehicle they intend to buy, even if they tested a demo previously. Therefore, the rule change allows 200 miles for such purposes on vehicles sold as new.



For vehicles traded to a WI dealer from an out-of-state dealership, the selling dealer is not responsible for determining whether miles accrued on the vehicle at the out-of-state dealership were for purposes allowed under WI law. However, if the vehicle is traded from a WI dealership, the selling dealer must count mileage from test drives at the previous dealership into the total 200 miles when determining if the vehicle can be sold as new. Dealers are not required to keep records of how new car miles are accrued, but should be prepared to explain mileage on a vehicle in the event DOT is called upon to address a consumer complaint about new car mileage.



Note that “new” is defined in two places in the Administrative Code. The Trans 137 definition of “new” defines new for the purposes of franchise law. The Trans 139 definition of “new” vehicle defines new for purposes of disclosing a vehicle as new or used.

Compare:

Trans 137 “New” ***Only a franchised dealer may sell a vehicle that meets this definition of “new”:***	Trans 139 “New” ***A vehicle that meets this definition may be sold as new, rather than as used.***
Vehicle is not privately titled (dealerships are not considered private)	Vehicle has not been privately titled
Vehicle has not been operated more than 6,000 miles	Vehicle has not been operated more than 200 miles excluding:
Vehicle has not been operated more than 4,000 miles and owned more than 120 days	o Manufacturer tests o Dealer pre-delivery tests o Dealer exchange or delivery
Vehicle is of the current model year	

Note: A vehicle that no longer meets the definition of new under Trans 139, may still be “new” under Trans 137, and could be sold only by a dealer franchised for that make.

Estimated mileage at delivery—order out vehicles

In addition to the revised definition of “new” vehicle, DOT added a requirement that dealers include on the purchase contract a written estimate of mileage on any new vehicle that is not on the dealer’s lot—locate vehicles and factory order-outs. Dealers and purchasers can negotiate regarding how far the dealer should search for an order out vehicle, and how many miles the purchaser is willing to have on the new car when it is delivered. If the new car arrives with more than the estimated mileage, the consumer may cancel the contract without penalty. *See revised Trans 139.05(6m)*

Motorcycle disclosure change

In response to requests from the motorcycle industry, WisDOT removed the requirement that motorcycle dealers attach a disclosure label to used cycles offered for sale. Labels interfered with test drives and were too easily damaged and costly to replace. Motorcycle dealers must still inspect vehicles and complete a disclosure label before offering a used cycle for sale, and the rule requires them to show the label to any prospective purchaser before negotiating a deal. However, the label does not have to be attached to the cycle for display. Note that the motorcycle disclosure label currently in use may continue to be used until DOT develops a variant form of the Wisconsin Buyers Guide tailored to motorcycles. (The rule currently references the Wisconsin Buyers Guide for motorcycles, which DOT is developing in 2004, based on current law.) *See revised Trans 139.04(6)(d)*

Superseding purchase contracts

Revised Trans 139.05(1)(a) will now allow dealers to make changes to the motor vehicle purchase contract in two ways. Changes may be notated on the existing contract and initialed by the consumer, or the dealer may create a replacement (superseding) contract indicating that it replaces or supersedes the original contract, and attach all previous contracts. Dealers must keep records of all original and replacement contracts for 5 years. It is an unfair practice to make material changes to a contract without disclosing them, so it is very important to explain any changes to your customer. It is particularly important to clearly document and discuss any changes to the cash price of a vehicle, in order to avoid charges of bushing. *See Trans 138.04(2)(e), 139.05(11m)*

Multiple contingent contracts

Before the rule change, it was illegal to write two contracts for the same vehicle. DOT realized that sometimes several prospective purchasers would like to "get in line" for the same vehicle in the hopes of buying it if a prior contract doesn't close due to financing contingencies or other circumstances. New rule language allows dealers to write multiple contracts for a vehicle as long as subsequent contracts disclose that they are contingent on a prior contract not closing. Contingent contracts are not binding on the consumer until the dealer notifies the consumer that the prior contract is void and the contingency is removed. Until that time, the consumer can cancel the contingent contract without penalty. *See Trans 139.05(2)(jr), 139.05(11m)*

Rule "clean-up"

Any comprehensive rule change provides opportunities for to fine-tune rule language for clarity. Many of the changes in this rule merely "clean up" language and make existing requirements clearer. These changes will not affect the way your dealership does business. Among those changes, you may notice:

- A new definition of "day" clarifying calendar vs. business day.
- Definitions of "dealer" and "salesperson" revised to match the current statutory definition.
- New definition of "pay-off" meaning the outstanding balance on a lease or loan.
- Re-organization of Trans 138.04 record-keeping requirements to improve readability.
- Clarification of the existing requirement in Trans 139.05(2)(j) to return down payment or trade-in vehicle and title in one business day without penalty if a contract is void due to a financing contingency.
- Consistent use of the term "service contract" where "service contract" and "service agreement" had been used interchangeably in the rule.
- Penalty provision for breaking the contract moved directly above the purchaser signature block on the contract to make it more apparent to the consumer.

Show all components of vehicle price on contract

Changes to Trans 139.05(2)(g) require a more detailed listing of the components of vehicle price than previously. The contract must first list the MSRP for new vehicles or the Wisconsin Buyers Guide price for used vehicles.

The contract should list all additional charges, mark-ups, mark downs, discounts or other adjustments made to arrive at the price due on delivery, including but not limited to, delivery charges, sales tax, license and title fees, down payment, owned trade-in allowance positive or negative leased trade-in allowance, estimated or actual pay-off amount, or estimated or actual lease buy-out amount for any loan secured by a trade-in vehicle.

Rebates should be referenced separately by amount and assignment.

The itemized calculation of vehicle price must appear on the contract face (for example, in the transaction computation section or under "other conditions of sale"), except that components of the MSRP can be provided in an addendum referenced in the contract. Use of a pre-printed addendum showing MSRP detail may reduce the likelihood of pricing errors that can occur when MSRP detail is hand-copied from an addendum onto the face of the contract. DOT suggests you simply reference the MSRP addendum on the contract face. Purchasers do not have to sign the attachment showing MSRP detail.

Estimated trade-in lien payoff amounts

Trans 139.05(8)g now allows a customer to rescind the deal without penalty if the actual lien payoff exceeds the estimated payoff by more than one payment on the original loan securing the trade-in vehicle. The dealer must disclose to the customer in writing the difference between the actual and estimated payoff. The customer has 7 days to accept the deal and pay the higher pay-off amount, or the deal is void and the dealer can sell the car to someone else.

Note that this rule change makes "spot deliveries" even more risky for dealers. If a dealer delivers a vehicle based on an estimated pay-off and later learns the estimate differs from the actual pay-off by more than one monthly payment, the dealer must either absorb the difference or give the consumer the required notice and opportunity to cancel the deal. If the consumer opts to cancel the deal and return the car after delivery, the dealer will suffer losses, (eg. a returned new car would have to be sold as used.) A credit report will generally show a balance higher than what's actually owed. That figure might serve as a safe lien pay-off estimate in the contract. The dealer would, of course, refund any overage if the vehicle was spot-delivered based on an estimate that exceeded the actual pay-off.

Also note that a dealer could not, for example, include in the contract any additional agreement that the purchaser will execute the deal and pay the difference despite the fact that the actual payoff exceeds the estimate by more than one monthly payment. A dealer cannot legally include any provision in a contract which removes protections the purchaser has under the law.

Disclosing and rescinding rebates

The revised Trans 139.05(8r)(a) makes clear that rebates must be referenced individually on the contract. If the purchaser fails to qualify for a rebate that was referenced in the contract, the dealer may pay the difference or notify the consumer in writing that they did not qualify for the rebate. If the dealer provides the notice, the purchaser has 7 days to accept or reject the deal at the higher price or the deal is void and no penalty may be charged to the consumer. Delivering the vehicle without notifying the purchaser that they failed to qualify for the rebate is bushing, unless the dealer delivers the vehicle at the original contract price. In addition, if a rebate becomes available after the contract is signed, but before delivery, the dealer must give the purchaser the rebate.

Once again, beware of spot deliveries. If a dealer delivers the vehicle and later learns the purchaser didn't qualify for a promised rebate, the dealer would either have to absorb the expense or give the consumer notice and the opportunity to cancel the deal and return the car, which would then have to be sold as a used vehicle.

New vehicle damage disclosure calculation

On any new vehicle, demonstrator or executive vehicle, any corrected damage exceeding 6% of the MSRP, as measured by retail repair costs, and all uncorrected damage must be disclosed in writing to the purchaser before delivery. Damage to glass, tires, bumpers is excluded from the 6% rule when replaced by identical manufacturer's original equipment. Under the rule change, damage to moldings and audio equipment is also excluded when replaced by identical manufacturer's original equipment.

Financing contingencies "how to"

Changes to financing provisions in the contract make it easier for dealers to void a deal when the purchaser does not respond to notice of finance terms the dealer offers after the contract signing and *before delivery*, or when the purchaser is arranging his or her own financing and does not provide evidence of financing.

Here's a refresher on completing the finance section of the contract. Use Box A "In attached disclosure" of the finance section of the motor vehicle purchase contract if the dealer is arranging financing and all Truth in Lending disclosures are given to the purchaser before contract signing. Use Box B "Acceptable to purchaser" if arranging financing for the purchaser, but no financing disclosures are made before contract signing. If the dealer is not arranging financing and the purchaser will be arranging financing independently, check the box for "Financing arranged with the creditor of my choice." Use the "cash transaction" box *only* if the customer is paying cash. Do not use it if the purchaser is arranging their own financing—even a home equity loan. If the consumer is using any type of financing to pay for the vehicle, it is *not* a cash sale.

Under the revised Trans 139.055, if a dealer provides financing disclosures before contract signing (Box A), and the dealer can't obtain financing on those terms, the dealer now has 14 days to notify the purchaser in writing that the contract is cancelled *as long as the vehicle has not yet been delivered.* If the dealer fails to provide such timely notice, the purchaser can elect to carry out the contract, and the dealer must finance the purchase according to the disclosed terms within 28 days of the contract date. ***Once the vehicle is delivered, all financing terms are final.***

If the dealer wants to bind a purchaser to the contract after contract execution (Box B) but *before delivery*, the dealer must give the purchaser all required Truth in Lending disclosures, and give notice that the purchaser has 7 days to accept or reject the proposed financing terms. If the consumer rejects financing or does not respond to the notice, the contract is void. If the purchaser accepts the offered financing terms, the dealer must deliver the vehicle at those terms.

A contract that is contingent on a purchaser arranging financing is void if the purchaser does not give the dealer evidence (such as a loan commitment letter) that the purchaser has secured financing within a time established in the contract.

A dealer can't charge a fee or penalty in connection with a contract that is rescinded due to these financing contingencies. *See revised Trans 139.055*

See your dealer

The rule change adds language to the purchase contract advising consumers to contact the dealer first with any problems regarding the vehicle or sale, and then provides contact information for DOT Dealer Section.

Warranty disclosure

This rule change restores a long-standing warranty disclosure requirement inadvertently deleted in a previous rule change (enforcement of the provision has been continual). Dealers are required to honor any manufacturer or part warranty they disclose in error. In the event a warranty is improperly disclosed as remaining on the vehicle, the dealer's obligation is limited to honoring the terms and conditions of the original warranty. Dealers can check "not known" if they are unsure whether warranty remains on a used vehicle. However, a dealer would use "not known" only in very rare instances when selling a used vehicle for which they hold a franchise. Dealers have an obligation to find out whether there is remaining warranty on those vehicles before completing the Buyers Guide. *See revised Trans 139.06(10)(b)-(e)*

Pay off that trade in 14 days

Dealers now must pay any lienholder of a trade-in vehicle the amount disclosed on the purchase contract within 14 days of taking a vehicle in trade. The dealer is responsible for accrued interest and penalties that result from the dealer delaying pay-off beyond 14 days.

Auction paperwork timeline extended

Trans 138.05(5) was revised to allow auctions 14 rather than 12 days to give a dealer clear title to a vehicle purchased at auction or the dealer can rescind the sale. Now auctions can deliver paperwork in person to a dealer who attends the next scheduled auction. The change typically shortens wait time for auction paperwork, by eliminating mail time.

Consignment vehicles

New consignment protections were added to the rule as a result of a case in which consigned vehicles were seized as dealership property during a bankruptcy action, costing consignors millions of dollars. A recent statute change now makes consigned personal use vehicles the property of the consignor not the dealer. However, business vehicle consignors did not receive similar protection under that law.

Revised Trans 139.08 clarifies requirements for all consignment sales, including:

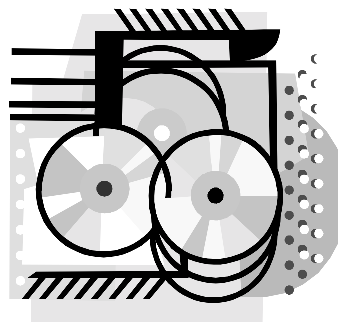
- Dealers may now hold a photocopy of the title rather than the actual title for the consigned vehicle.
- The consignor may not be required to sign the title until the vehicle is sold.
- Dealers must use a consignment agreement for each vehicle offered for sale on consignment and must keep records of all consignment agreements and disclosure forms.
- If the vehicle is not sold, the dealer must return the title promptly
- For each *business* vehicle consigned to the dealership, the dealer must file a UCC Financing Statement naming the consignor as a secured party. The UCC filing fee can be passed on to the consignor. (Wholesale and auction dealers are not required to execute UCC financing statements.)
- Dealers must remit any money due a consignor within 7 days of when the consigned vehicle was sold.

Use revised purchase contracts by March 1

Revised vehicle purchase contracts are available from forms vendors now. Some contract changes were made in recent years in anticipation of this rule change to reflect current business practices. Therefore, many of the contract changes that flow from this rule change may not look new to you—they've been on the contract for years.

Electronic storage of dealer records allowed

Effective January 1, 2004, licensed dealers may store documentation of completed vehicle transactions in an electronic format and dispose of paper files. DOT evaluated current laws, and record-keeping procedures at dealerships, and determined that electronic record keeping at dealerships fits within current law and supports current dealership practices.

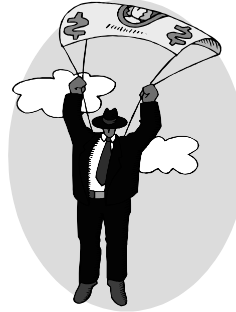


Before using an electronic record-keeping system, dealers must comply with *DOT's Guidelines for Electronic Record Storage* (WisDOT form ERSG) and they must complete and submit *WisDOT's Electronic Records Storage Statement* (WisDOT form ERSS). Please contact DOT's dealer hotline at 608.266.1425, for copies of the ERSG and ERSS forms, or download the forms from the WisDOT Web site at *www.dot.wisconsin.gov/business/dealers/dealer-forms.htm*

Dealer bonding law changes

2003 Wisconsin Act 76—effective November 27, 2003, increased the face amount of dealer bonds and created a new bonding requirement for wholesalers.

The law change was initiated by the Wisconsin Automobile and Truck Dealers Association, with input from DOT.



The act makes the following changes:

1. Increases the face amount of the bond or irrevocable letter of credit provided by retail motor vehicle dealer to $50,000. No combination of smaller bonds is acceptable in lieu of a full $50,000 bond.(Bond amount remains $5,000 for those dealers who sell only motorcycles.)
2. Requires wholesalers to provide a bond or irrevocable letter of credit in the amount of $25,000.
3. Creates a definition of "wholesaler" or "wholesale dealer" and removes "wholesaler" from the definition of "distributor." (This clarifies that distributors deal in new vehicles and wholesalers in used vehicles. The new statutory definition of wholesaler matches the existing definition in Trans 138, Wisconsin Administrative Code.)
4. Clarifies that the supplemental bond of $5,000 to $100,000 is in addition to the required bond or irrevocable letter of credit.

To implement these changes, DOT began requiring the bond or irrevocable letter of credit in the new amount for all first-time dealers or wholesalers with applications received on or after November 27, 2003. Existing dealers and wholesalers are required to provide the new bond or irrevocable letter of credit amount at their next renewal, starting with January 31, 2004 expirations.

Dealers with existing bonds will need to provide a new bond; bonding companies will not issue riders for bonds written before the law change, because of a wording change in the law. Existing irrevocable letters of credit will require a new letter of credit.

Revised bond and letter of credit forms are available at the WisDOT Web site at *www.dot.wisconsin.gov/business/dealers/dealer-forms.htm*. If you have questions, please contact Dealer Section at 608.266.1425 or email dealers.dmv@dot.state.wi.us Visit the DOT Web site for online versions of the following Dealer Section publications available now:

Web update

- *Wisconsin dealer directory*
- *Non-valid Wisconsin BID card directory*
- *Out-of-business dealer directory*

See *www.dot.wisconsin.gov* at "Doing Business" "Dealer and motor vehicle business licenses" "Tips and Tools for Dealers."

Looking for *Plain Dealing* Enforcement Actions list?
You'll find it in DOT's regular edition of *Plain Dealing* coming soon.

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