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FEDERAL TRADE COMMISSION

16 CFR Part 455 Trade Regulation Rule; Sale of Used Motor Vehicles

53 FR 17660
May 17, 1988

ACTION: Final Staff compliance guidelines.

SUMMARY: The staff of the Federal Trade Commission publishes its staff compliance guidelines for the Used Car Rule to provide assistance to industry members. The views expressed in the guidelines are those of the staff only. They have not been approved or adopted by the Commission and are not binding on the Commission. However, the guidelines will serve as enforcement criteria for the staff in assessing compliance with the trade regulation rule.

EFFECTIVE DATE: May 17, 1988.

FOR FURTHER INFORMATION CONTACT: John Hallerud (312) 960-5615, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe Street, Suite 1825, Chicago, Illinois 60603.

TEXT: SUPPLEMENTARY INFORMATION:

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I. Introduction

These staff compliance guidelines describe certain provisions of the Federal Trade Commission's Trade Regulation Rule Concerning the Sale of Used Motor Vehicles (the "Rule" or "Used Car Rule"), 16 CFR Part 455, which was promulgated on November 19, 1984.¹ The Used Car Rule became effective on May 9, 1985.² Violations of the Rule can result in the imposition of civil penalties of up to \$10,000 per violation.³

These final guidelines are a modification of the guidelines published in the Federal Register on May 18, 1987. Some of the changes were based on several comments that were received. An analysis of those comments is included in a separate notice in the Federal Register.

The guidelines neither amend nor modify the Rule. Staff is publishing these guidelines to provide assistance to industry members in understanding the Rule and complying with its obligations. In addition, staff has prepared a brochure entitled "Facts For Business: [A] Dealer's Guide to the FTC Used Car Rule," designed to assist dealers in understanding the Rule. Staff mailed a copy of this brochure to more than 89,000 dealers before the Rule took effect. If you are a new dealer, did not receive this brochure, or need another copy, you may request a free copy by writing to the Publications Branch, Federal Trade Commission, Washington, DC 20580. You also may request a free copy of these compliance guidelines.

The views expressed in these guidelines are those of staff only. These views have not been approved or adopted by the Commission and they are not binding on the Commission. However, the guidelines will serve as enforcement criteria for staff in assessing compliance with the Used Car Rule.

The Used Car Rule is primarily intended to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. The Rule requires clear disclosure through a window sticker, called the "Buyers Guide," of any warranty coverage and the terms and conditions of any dealer-offered warranty, including the duration of warranty coverage and the percentage of total repair costs that the dealer will pay. The Rule also requires certain additional disclosures on the Buyers Guide, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of the fourteen major systems of an automobile and defects that can occur in these systems.

In addition, the Rule provides that the Buyers Guide disclosures are incorporated into the sales contract. Dealers are required to place a specific, two-sentence disclosure in the sales contract informing the purchaser that, in the event of any inconsistency between the Buyers Guide and the sales contract, the information on the Buyers Guide will govern. The Rule also requires dealers to give a copy of the Buyers Guide reflecting the final warranty terms to the purchaser.

When the used car transaction is conducted in Spanish, the Rule requires that the dealer display a Spanish-language version of the Buyers Guide on the vehicle prior to offering the vehicle for sale. The Rule includes a text for the Spanish-language version.

These guidelines explain the Rule's requirements, section by section. The discussion includes illustrations of how the Rule applies in specific fact situations that are faced by many dealers. If further compliance questions arise, dealers may seek an informal staff advisory opinion,⁴ or if appropriate, a formal advisory opinion from the Commission, as provided for in Section 1.1 through 1.4 of the Commission's Rules of Practice, 16 CFR 1.1-1.4.

II. What Transactions Does the Rule Cover?

Generally, all sellers of used vehicles are covered by the Rule, except those who sell, or offer to sell, fewer than six (6) used vehicles in a twelve month period. A used vehicle is any car, light-duty van or light-duty truck that has been driven more than the distance necessary for test driving or moving the vehicle prior to delivery to a consumer.

The following definitions, included in the Used Car Rule, provide more detailed information as to the persons, firms, and vehicles that are covered by the Rule. The Used Car Rule does not affect the definitions of terms in state law such as "dealer," "used vehicle," "new vehicle," or "vehicle." Likewise, state law definitions of the specific terms set out in § 455.1(d) of the Rule have no effect on the Used Car Rule.

- A. "Vehicle" Defined -- Section 455.1(d)(1)

For the purposes of the Rule, a "vehicle" is defined as "any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) [the loaded weight] of less than 8,500 lbs., a curb weight [the weight of an unloaded vehicle] of less than 6,000 lbs., and a frontal area of less than 46 sq. ft." Thus, the Rule covers automobiles, including "classic cars," as well as most light-duty vans and light-duty trucks. Due to the limit on the vehicle size built into this provision, large trucks and recreational vehicles generally are not covered.

Staff believes the Rule also does not apply to the sale of tractors, combines, tillers, and other vehicles that are designed primarily for agricultural use, but which meet the definition of the term "vehicle" that is set forth in the Rule. Motorcycles are not covered by the Rule. Staff believes that mopeds, like motorcycles, also are not covered by the Rule.

B. "Used Vehicle" Defined -- Section 455.1(d)(2)

Under the Rule, the term "used vehicle" includes all vehicles that have been "driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer." This definition, therefore, includes demonstrators and company cars.⁵ However, a vehicle sold as scrap or for its parts and not as an operating vehicle is specifically excluded from the definition of used vehicle, if the dealer surrenders any title documents to the appropriate state authority and obtains a salvage certification. Illustrations 2.5 and 2.7 discuss the application of the Rule to demonstrator vehicles. Illustration 2.6 discusses how the Rule applies when a vehicle is transferred from one dealer to another.

C. "Dealer" Defined -- Section 455.1(d)(3)

Under the Rule, the term "dealer" includes any person or business that is presently selling or offering for sale a used vehicle, after having sold or offered for sale five or more used vehicles during the previous twelve months. In other words, a person or business becomes a "dealer," for purposes of the FTC Used Car Rule, upon offering for sale the sixth used vehicle in twelve months. The Rule does not impose any requirements on persons or businesses that offer fewer than six used vehicles for sale in twelve months. Illustrations 2.1 and 2.2 discuss this provision of the Rule.

The Used Car Rule's definition of "dealer" specifically excludes banks and financial institutions selling used vehicles. However, the Rule applies to the retail sale of used vehicles by affiliates and subsidiaries of banks or financial institutions. Illustration 2.11 discusses the application of the Rule to banks.

Section 455.1(d)(3) of the Rule also excludes sales of used vehicles by a business to its own employees. In addition, the term "dealer" excludes a lessor offering to sell a leased vehicle to any of the following parties: (1) The lessee; (2) an employee of the lessee; or (3) a buyer procured by the lessee.⁶ Sales and offers for sale by lessors to all other parties are covered by the Rule. If a lessee offers for sale (other than to its employees) more than five leased vehicles within a twelve month period, the lessee must comply with the Rule because the lessee fits the definition of "dealer" and is not specifically excluded. Illustration 2.8 discusses how the Rule applies to the sale of leased vehicles.

D. "Consumer" Defined -- Section 455.1(d)(4)

For purposes of the Used Car Rule, the term "consumer" is broadly defined to include any person who is not a used vehicle dealer. Section 455.2(a) of the Rule requires you (the dealer) to prepare and display a Buyers Guide before offering to sell a used vehicle to a consumer. In the Statement of Basis and Purpose, the Commission indicated that the term "consumer" also includes small businesses. 49 FR 45692, 45708 (1984). If you are offering to sell a used vehicle only to another dealer, the Rule does not apply to the sale of that vehicle. Illustrations 2.3 and 2.4 highlight this provision of the Rule.

E. Consignment Sales

Before you offer to sell a used vehicle that you have on your lot through a consignment, power of attorney or other such agreement, the Rule requires you to prepare and display a Buyers Guide. The point to remember is that whenever you, the dealer, offer to sell a used vehicle to a consumer, you are responsible for making sure that there is full compliance with the Rule. If you are a dealer who consigns a car to another dealer for sale to a consumer on your behalf, both you and the other dealer are responsible for complying with the Rule.

F. Auctions

The Rule does not apply if you offer to sell a vehicle through an auction that is open only to other dealers. It does apply when your vehicles are offered for sale at an auction that is open to consumers.⁷

The auction company is also covered by the Rule if it has sold or offered to sell six or more used vehicles to consumers within a twelve month period. In this case, as with consignment sales, both you and the auction company are responsible for complying with the Rule. See Illustrations 2.9-2.10 for a further discussion of sales through auctions.

G. Where Does the Rule Apply?

The Used Car Rule was issued by the FTC based upon two sources of authority: Section 109(b) of the Magnuson-Moss Warranty Act, 15 U.S.C. 2309(b), and section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a. These Acts apply in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. 15 U.S.C. 2301(15). In addition, the Rule covers vehicles exported from the United States for sale at military post exchanges. 16 CFR 700.1(i).

Therefore, with the exceptions of Wisconsin and Maine, which have been granted statewide exemptions, the Used Car Rule applies in each of these jurisdictions. The Commission granted these exemptions under § 455.6 of the Rule, based on the finding that the relevant law in each state "affords an overall level of protection to consumers that is as great as, or greater than, that afforded by the Used Car Rule." 51

FR 20936, 20943 (1986); 53 FR 16390, 16394 (1988).

III. The Buyers Guide

A. General Information

Section 455.2 of the Rule requires dealers to prepare and display a window sticker called the "Buyers Guide" before offering a used vehicle for sale to a consumer. The Buyers Guide must disclose whether any warranty is offered and the basic terms of any warranty. If the dealer does not provide an express warranty, then the Buyers Guide must indicate that the vehicle is being offered for sale "as is" (with no express or implied warranties), or with only the applicable "implied warranties" required by state law. Each of these terms is explained on the Buyers Guide.

The Buyers Guide also includes several additional disclosures, including: A list of the fourteen major systems of an automobile and defects that can occur in these systems; a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing. Finally, at the time of sale, the dealer must give the buyer the original Buyers Guide (or an accurate copy) that was displayed on the vehicle. This Buyers Guide must reflect the final warranty terms agreed on between the buyer and seller.

B. Preparing the Buyers Guide

Section 455.2(a) of the Rule explains how to fill in the Buyers Guide. You must complete four different parts of the preprinted Buyers Guide: (1) Vehicle information; (2) warranty information; (3) service contract availability; and (4) dealer identification and consumer complaint information.

1. Buyers Guide Format -- Section 455.2(a)

The Rule requires dealers to use the exact format for the Buyers Guide that is shown in the Rule. The text of the Rule contains a model Buyers Guide, in both English and Spanish, and also provides specific printing instructions. Dealers may print their own Buyers Guides or get copies from any other source, such as trade associations and from companies.

All Buyers Guides must comply exactly with the standardized wording, type style, type size, and format required by the Rule. Section 455.2(a)(2) of the Rule requires that the Buyers Guide be printed in 100% black ink on white stock that is at least 11 inches high and 7 1/4 inches wide. Dealers also may post a completely separate window sticker to make other truthful and non-deceptive information known to the consumer, as long as that information does not conflict with the Buyers Guide and the sales contract.

2. Vehicle Information -- Section 455.2(d)

In the spaces provided at the top of the Buyers Guide, fill in the vehicle make, model, model year, and vehicle identification number (VIN). You may write in a dealer stock number in the space provided or you may leave this space blank.

3. Warranty Information -- Section 455.2(b)

a. "As Is -- No Warranty" version. If you offer a vehicle "as is," which means without any express or implied warranties, mark the box provided next to the "As Is -- No Warranty" disclosure. The Used Car Rule does not affect any state law that requires you to use special language or a separate form to make an effective "as is" sale. "As is" disclosures will excuse you from liability under state law only if you follow state law requirements for making the disclosure. Illustration 3.2 further discusses this portion of the Rule.

b. "Implied Warranties Only" version. Some states limit or prohibit the sale of used vehicles "as is." The Used Car Rule does not override such state laws. In those states § 455.2(b)(1)(ii) of the Rule requires you to use the version of the Buyers Guide containing the following "Implied Warranties Only" heading instead of the "As Is -- No Warranty" heading:

Implied Warranties Only. This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you brought the vehicle.

If you are not offering an express warranty, the "Implied Warranties Only" box must be checked. If you offer an express warranty, check the "Warranty" box on this Buyers Guide.

In states that allow "as is" sales you also must use the "Implied Warranties Only" heading when you choose to offer only implied warranties. If a state allows "as is" sales for some, but not all, used vehicles, you may use an "As Is -- No Warranty" Buyers Guide on those vehicles that the state will allow you to sell "as is."

Buyers Guides with the "Implied Warranties Only" heading are available from the same sources that supply the "As Is -- No Warranty" version of the Buyers Guide. Alternatively, dealers could have the "Implied Warranties Only" disclosure printed on labels, and then simply affix these labels to the Buyers Guide, covering up the "As Is -- No Warranty" state. Illustration 3.1 discusses use of Buyers Guides with the "Implied Warranties Only" heading. Appendix A gives an example of the "Implied Warranties Only" Buyers Guide.

c. Filling in the Warranty Portion of the Buyers Guide. Dealers who offer a warranty on the vehicle must mark the large box next to the word "warranty," and complete the other parts of the warranty section of the Buyers Guide. Section 455.2(b). First, mark one of the smaller boxes to indicate whether the warranty offered is "Full" or "Limited." Section 455.2(b)(2)(i). Under federal law your warranty is "full" if each of the following five statements about your warranty's terms and conditions is true: 8

- (1) You provide warranty service to anyone who owns the vehicle during the warranty period, when they report a problem.
- (2) You provide warranty service free of charge, including such costs as returning the vehicle or removing and reinstalling a "covered" system when necessary.
- (3) You provide, at the consumer's choice, either a replacement or a full refund if you are unable, after a reasonable number of tries, to repair the vehicle.
- (4) You do not require consumers to perform any duty as a precondition for receiving service, except notifying you that service is needed, unless you can demonstrate that the duty is reasonable.
- (5) You do not limit the duration of implied warranties.

If any one of these statements is not true, then your warranty is "limited." A "limited" warranty tells your customers that there are some costs or responsibilities that you will not cover for the specified systems.

A "full" or "limited" warranty need not cover the entire vehicle. You may give a "full" warranty on some systems, and a "limited" warranty on others. If most systems are covered by a "limited" warranty, check the limited warranty box, and list which systems will be covered by a full warranty. See Illustration 3.4 for an additional discussion of this issue.

Second, fill in the percentage of the repair cost that will be paid by the dealer. For example, "The dealer will pay 100% of the labor and 100% of the parts * * *."9 See Illustration 3.6 for a discussion of how the Rule applies to the use of a deductible. Section 455.2(b)(2)(iv).

Third, indicate which of the specific systems are covered. Do not use shorthand terms such as "drive train" or "power train". Rather, indicate the exact systems (e.g., frame and body, brake systems, etc.) that are covered. A list of the major systems of an automobile is printed on the back of the Buyers Guide. Those terms may be used to indicate the specific systems covered by the warranty. Illustration 3.5 provides an explanation of how to disclose the systems covered. Section 455.2(b)(2)(ii).

Some dealers may wish to provide warranty coverage for some systems of a used vehicle and at the same time disclaim all other express or implied warranty coverage for the other systems of the car. A dealer may use the space provided for warranty disclosures to write in any disclaimers or exclusions. You may enlarge the Buyers Guide, if necessary, to provide additional warranty information. Illustration 3.3 further discusses this issue.

Fourth, indicate the duration of the warranty. For example, "30 days or 1,000 miles, whichever occurs first." If there are different durations for different systems, write out each different duration. If the duration of the warranty is the same for all systems covered by the warranty, you need only write the duration once. Section 455.2(b)(2)(iii).

d. Unexpired Manufacturer's Warranties. If you choose, you may disclose unexpired manufacturer's warranties in the warranty section of the Buyers Guide. To disclose that a manufacturer's warranty still applies on a used vehicle, staff suggests that dealers use one of two methods, depending on whether the dealer offers a warranty in addition to the unexpired manufacturer's warranty. Section 455.2(b)(2)(v).

First, if additional warranty coverage is not offered by the dealer, the dealer should check the large box to indicate that a "warranty" is offered, and then simply fill in (with a rubber stamp, if desired) the following statement, which is set forth in § 455.2(b)(2)(v):

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.

Separately, and beneath that statement, the dealer may add the following language, but only if permitted by state law to sell a used vehicle on an "as is" basis:

The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacturer's warranty.

An example of a completed Buyers Guide with this language is included as Appendix B to these guidelines.

Second, if a dealership warranty is offered and the dealer also chooses to disclose the unexpired manufacturer's warranty, the dealer should: (1) Mark the large box to indicate that a "warranty" is offered, and fully complete the rest of the Buyers Guide's warranty section, indicating whether the dealer's warranty is full or limited, what percentage of parts and labor are covered, the systems covered, and the duration of coverage, as required by § 455.2(b) of the Rule; and (2) fill in (with a rubber stamp, if desired) the unexpired manufacturer's warranty statement below the dealer's warranty disclosure. An example of a completed Buyers Guide with this language is included as Appendix C to these guidelines.

e. Mandatory Warranties. Although the Used Car Rule does not require dealers to disclose on the Buyers Guide warranties that are the responsibility of another party, such as the manufacturer, the Rule does require dealers to disclose information about all warranty coverage that they provide. Therefore, if federal, state, or local laws require you to give a specific warranty on a used vehicle that you offer for sale, you must briefly describe this warranty on the Buyers Guide.10 Section 455.2(b)(2). This warranty information should be included in the "systems covered/duration" portion of the Buyers Guide. If necessary, you may enlarge the "system covered/duration" portion of the Buyers Guide to accommodate additional warranty information. You also must fully comply with disclosure requirements of the state or local law. For example, you must comply with a state or local law that requires you to give the consumer a separate warranty document.11

4. Service Contract Availability

A "service contract" is defined in Section 455.1(d)(7) of the Used Car Rule as "a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle [which is] provided at an extra charge beyond the price of the used vehicle." (emphasis added). Although a warranty also may provide such protection it is distinguishable from a service contract because it is provided at no extra charge beyond the price of the vehicle.

If you offer a service contract on a particular vehicle, § 455.2(b)(3) requires you to mark the box provided on the Buyers Guide, next to the following disclosure:

SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. If you buy a service contract within 90 days of the time of sale, state law "implied warranties" may give you additional rights.

Remember: When a dealer enters into a service contract with a consumer within 90 days of selling the vehicle, federal law prohibits the dealer from disclaiming implied warranties on the systems covered in that service contract. For example, if you are a dealer who sells a car "as is," the car normally will not be covered by implied warranties (assuming that state law permits "as is" sales). But if you also enter into a service contract covering the engine for six months, you automatically provide an implied warranty on the engine.

If you are in a state that regulates service contracts as the "business of insurance," you need not include the service contract disclosure on your Buyers Guides. Section 455.2(b)(3). In those states, you have the option to check the box next to the service contract disclosure, cross out the service contract disclosure, delete it from the Buyers Guide, or do nothing to change the pre-printed Buyers Guide that you have obtained.

5. Dealer Identification and Consumer Complaint Information

Put the name and address of your dealership in the space provided on the back of the Buyers Guide. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address. Section 455.2(c).

In the space provided below the dealer's name and address, you must put the name and telephone number of the person to contact if the buyer has a complaint. You might want to include the position of the person to be contacted, along with their name, so that consumers will know who to contact if the individual named has left the dealership. Section 455.2(e).

C. Spanish Language Sales -- Section 455.5

Section 455.5 of the Rule sets forth a Buyers Guide in Spanish that must be used by a dealer who conducts a sale in Spanish. From a practical standpoint, dealers must post both the English and Spanish versions of the Buyers Guide where a substantial number of sales are made in both languages. See Illustration 3.10 for a further discussion of this provision of the Rule.

D. How to Display the Buyers Guide

The Buyers Guide must be displayed in a side window of the vehicle so that the front side (with the title "Buyers Guide") faces the outside. You may display copies of both the front and back of the Buyers Guide so that both sides can be read from outside. Section 455.2(a)(1).

The Buyers Guide should be firmly affixed to the inside of the side window. This may be accomplished using any method you select, such as tape, light glue, etc. If desired, you may display the Buyers Guide inside a clear plastic sleeve which holds the Buyers Guide against the inside of the side window. If necessary, the form may be removed from the window temporarily during a test drive, but you must return it to the window as soon as the test drive is over.

E. Changes in Warranty Coverage

If you and the buyer agree to any changes in the warranty that was described on the Buyers Guide, you must write those changes onto the Buyers Guide. Section 455.2(b)(2)(v) (paras. 2-3). If, for instance, the car was originally offered with a warranty, but following negotiations it was actually sold without a warranty, cross out the offered warranty and mark the "As Is -- No Warranty" or "Implied Warranties Only" box, as appropriate. If you first offer the vehicle for sale "as is" (or with only implied warranties), but then sell it with a warranty, simply cross out the box for the "As Is -- No Warranty" Disclosure (or the "Implied Warranties Only" disclosure) and fill in the warranty terms. In these cases, be sure that the Buyers Guide that you give to the buyer accurately reflects the final warranty terms. Appendix D and Illustrations 3.7 and 3.8 further explain this provision of the Rule.

In addition to noting any agreed-upon changes in warranty coverage on the Buyers Guide, you must remember to include the final warranty terms in your sales contract or separate warranty document. Section 455.4. Your contract with the consumer may include several documents. It might include a "sales contract" as well as a separate warranty document that gives detailed warranty information. Whether you make warranty disclosures in the sales contract or in a separate warranty document, you must remember to make any necessary changes to the warranty information to reflect the final warranty terms after negotiations with the customer. Sales contract and warranty disclosures are discussed in more detail in the next section.

IV. Sales Contract and Warranty Disclosures

A. The Used Car Rule's Requirements

Pursuant to § 455.3(b) of the Rule, information on the Buyers Guide will override any contrary provisions that there may be in the sales contract. To inform consumers of this provision of the Used Car Rule, you must place the disclosure that follows in the sales contract in a conspicuous manner:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.¹²

See Illustration 4.1 for a discussion of whether a financing document must contain the disclosure.

B. The Warranty Disclosure Rule's Requirements

If you offer a warranty, you must comply with the Federal Trade Commission's Warranty Disclosure Rule, 16 CFR Part 701. The disclosures required by this Rule may be placed in the "sales contract" or in a separate warranty document, but they must all appear together in the same document. Specifically, in simple and readily understood language, your warranty document must:

- (1) State whether the warranty offered is "full" or "limited."
- (2) Indicate the percentage of the repair costs that you will pay.
- (3) List the specific systems that are covered by the warranty.
- (4) List any parts or systems that are excluded from coverage under the warranty, if it is necessary for clarification. For example, "battery not covered."
- (5) Indicate the duration of warranty coverage for each of the covered systems.
- (6) Explain how a customer gets warranty service. Include your company's name, address, and the telephone number of the person to call concerning warranty service.
- (7) Include the following disclosure: "This warranty gives you specific legal rights, and you may also have other rights which vary from state to state."
- (8) Disclose all obligations that the consumer has, if any, as a condition to obtaining warranty service.
- (9) Include the following disclosure only if you wish to limit the duration of implied warranties: "Some states do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you."
- (10) Include the following disclosure only if you wish to exclude or limit consequential or incidental damages: "Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation may not apply to you."
- (11) Indicate who is covered by the warranty, if you choose to limit the coverage. For example, "warranty covers only the original purchaser" or "commercial use excluded."

Put into the warranty document everything that you will do and everything that you expect your customers to do under the warranty. Make sure that your customers can find each item of information in the warranty easily.

The Federal Trade Commission has prepared several publications that also may help you to comply with the laws and regulations governing warranties. "Writing Readable Warranties" is available for \$2.00, from the Superintendent of Documents, Washington, DC 20402, GPO Order #: 018-000-000303-1. "A Businessperson's Guide to Federal Warranty Law," GPO Order #: 018-000-00324-4, is available for \$1.50, also from the Superintendent of Documents. A supplement to that publication, containing the relevant statutes and regulations, is available at no charge from the Publications Branch, Federal Trade Commission, Washington, DC 20580.

You may also want to consult your lawyer to be sure that your warranty meets all the requirements of both Federal and state laws.

V. Contrary Statements -- Section 455.4

Section 455.4 of the Rule prohibits dealers from making "any statements, oral or written, or tak[ing] other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3 (of the Rule)." For example, you may not write that there is a warranty on the Buyers Guide, but disclaim all warranties in the contract of sale. As discussed in section IV(A) of these guidelines, the information on the Buyers Guide supercedes contrary information in the contract, under § 455.3(b) of the Rule. However, staff does not interpret § 455.4 to mean that the Used Car Rule prohibits a dealer from repairing a vehicle that was sold "as is."

VI. State Exemption Petitions -- Section 455.6

The Used Car Rule includes a specific provision that sets out the standards for granting statewide exemptions from the Rule. This provision States that the Used Car Rule will not be in effect in a state, to the extent specified by the Commission, where:

- (1) There is a state requirement in effect which applies to any transaction to which this rule applies, and
- (2) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by [the Used Car] Rule; * * * for as long as the State administers and enforces effectively the state requirement.

Final staff guidelines for state exemption petitions have been developed for the Commission's Trade Regulation Rule Concerning Funeral Industry Practices, 16 CFR Part 453 (the "Funeral Rule"). The state exemption provision in the Funeral Rule (16 CFR 453.9) is virtually identical to the Used Car Rule provision (16 CFR 455.6). Therefore, staff recommends that states that are interested in filing a petition for statewide exemption from the Used Car Rule consult the state exemption guidelines for the Funeral Rule for more detailed information

about § 455.6 of the Rule. These guidelines (published at 50 FR 12521 (1985)) provide an analysis of the procedures and materials that staff believes are relevant to an exemption proceeding.

VII. Illustrations

When Does the Rule Apply?

Illustration 2.1: You are opening your first dealership, and on your first day of business, you offer to sell five used vehicles to consumers. In the past twelve months, you have not offered to sell any other used vehicles to consumers. Are you covered by the Rule?

No. You are not a "dealer," because you have not offered to sell at least six used vehicle is a twelve month period. However, as soon as you offer your sixth used vehicle for sale to consumers within a twelve month period you become a "dealer," as defined in the Rule, and therefore must prepare and display a Buyers Guide on all used vehicles that you offer for sale to consumers. Section 455.1(d)(3).

Illustration 2.2: You are an individual who occasionally buys used cars, repairs them, and then offers them for sale to the public. In the past twelve months, you have offered five used cars for sale. You now are offering to sell your sixth used car to the public. Are you covered by the Rule?

Yes. Even if you are not considered a "dealer" under state law, the Rule defines you as a "dealer." Because you are offering to sell your sixth used vehicle to consumers within twelve months, you must comply with all aspects of the Rule, including preparing and displaying a Buyers Guide on that vehicle. Section 455.1(d)(3).

Illustration 2.3: You are a dealer offering to sell a particular used vehicle only to dealers. You do not offer to sell the vehicle to consumers. Must you comply with the Rule in this instance?

No. Because you are not offering to sell the vehicle to consumers the Rule does not apply. Section 455.2(a).

Illustration 2.4: Same as in 2.3 above, but it is your company's policy to offer a vehicle for sale to consumers for only 30 days, and then if the vehicle is unsold, it would be sold to a dealer at wholesale. Must you comply with the Rule during the 30 days that the vehicle is offered for sale to consumers?

Yes. Whenever you offer to sell a used vehicle to a consumer, you must comply with the Rule by preparing and posting a Buyers Guide before offering the vehicle for sale. In this example, you would be required to prepare and display a Buyers Guide while the used vehicle is being offered for sale to consumers. However, the Rule does not apply when you conduct a wholesale transaction, even if the vehicle was first offered for sale to consumers. Section 455.2(a).

Illustration 2.5: You are a dealer who regularly offers both new and used vehicles to the general public. You currently have four "demonstrator" vehicles in service. Are the demonstrators covered by the Rule?

Yes. Under the Rule demonstrator vehicles are included within the definition of "used vehicles."¹³ Therefore, before you show a demonstrator vehicle to a consumer, you must post a properly completed Buyers Guide on that vehicle. Demonstrators that are segregated from other vehicles being offered for sale need not have Buyers Guides displayed at all times. However, as a practical matter, you may wish to post Buyers Guides on all demonstrators whenever they are on your lot so that you can ensure your compliance with the Rule. On demonstrators that have never been titled to a consumer, both the Buyers Guide and the new vehicle disclosure sticker (the "Monroney Sticker") must be posted.¹⁴ Section 455.1(d)(2).

Illustration 2.6: You are a dealer who sometimes "transfers" or "trades" new vehicles with another dealer so that you can provide your customers with the exact car that they want. Do these trade cars have to display a Buyers Guide before you can offer them for sale to a consumer?

No. By simply trading a car with another dealer you have only accumulated mileage for the purpose of delivering the vehicle to the consumer. Therefore, the car would not be a "used vehicle" under the Rule. Section 455.1(d)(2).

Illustration 2.7: Same as 2.6 above, except that the first dealer drove the vehicle as a demonstrator before trading it to you. Does the traded car have to have a Buyers Guide before it can be offered for sale to a consumer?

Yes. If the vehicle was used as a demonstrator at any time, it must have a Buyers Guide in its side window before it can be offered for sale to a consumer. Section 455.1(d)(2).

Illustration 2.8: You are a dealer who also leases vehicles. You lease a car to Jones, who is not a dealer. At the end of the lease term you offer to sell the car to Jones. Must you prepare a Buyers Guide for this vehicle?

No. Although you are a used vehicle dealer, the Rule does not cover situations in which you sell or offer to sell the leased vehicle to the lessee, to an employee of the lessee, or to a buyer who is found by the lessee. Thus, you would not have to comply with the Rule if you offered to sell the car to Jones (the lessee) or to an employee of Jones. In addition, you would not be required to display a Buyers Guide if Jones' next door neighbor asked Jones about buying the car. But, if you reclaimed the car at the end of the lease term and then offered it for sale to the public, the Rule would apply. Section 455.1(d)(3).

Illustration 2.9: You are a used vehicle dealer who sells vehicles, from time to time, at auctions. These auctions are open only to other dealers. The only advertisements for these auctions are in trade journals. Are these sales covered by the Rule?

No. Selling at an auction that is open only to other dealers is just like a non-auction sale to another dealer: the Rule does not apply. Sections 455.1(d)(3), 455.2(a).

Illustration 2.10: Same as 2.9 above, but instead the auctions are open to consumers. Are these sales covered?

Yes. Before your used vehicles are offered for sale, sold, or made available for inspection at an auction that is open to consumers, you must prepare and display a Buyers Guide as required by the Rule. If the vehicle is sold to a consumer, you must comply with the other requirements of the Rule, just as if you had sold the vehicle from your regular place of business. If your used vehicle is sold at the auction to another dealer, you need not comply with respect to that particular vehicle.

Illustration 2.11: In your state, banks and financial institutions may own or operate general businesses as separate entities. You operate a retail used vehicle dealership that is owned in part by a bank. Must you comply with the Rule?

Yes. The Rule is intended to cover all used vehicle dealers, regardless of ownership. However, banks and financial institutions that directly offer to sell used cars are not covered by the Rule. Section 455.1(d)(3); Statement of Basis and Purpose, 49 FR at 45708.

Preparing the Buyers Guide

Illustration 3.1: You are offering a used vehicle for sale in a state that prohibits you from selling used vehicles "as is." Do you have to replace the "As Is -- No Warranty" disclosure with the "Implied Warranties Only" disclosure on the Buyers Guide?

Yes. The "Implied Warranties Only" disclosure must appear on the Buyers Guide in place of the "As Is -- No Warranty" disclosure if: (1) the vehicle is offered for sale in a state which prohibits "as is" sales; or (2) you decide to offer implied warranties, but no other warranties. In states that prohibit "as is" sales, the "Implied Warranties Only" heading must appear on the form even if you offer an express warranty. If you do offer a warranty you would leave the box next to "Implied Warranties Only" blank, check the warranty box, and fill out the rest of the warranty portion of the Buyers Guide. See Appendix A for an example of a Buyers Guide incorporating the "Implied Warranties Only" disclosure. Section 455.2(b)(1)(ii).

Illustration 3.2: You offer all your used vehicles for sale on an "as is" basis. Under the laws of your state, you must prepare a warranty disclaimer form, using specific language required by state law, and have the buyer sign the form. Can you display that form instead of the Buyers Guide?

No. The state law requirement does not affect your obligation to prepare and post a Buyers Guide on the used vehicle, nor will the Buyers Guide substitute for a state-required form. The Used Car Rule does not affect your obligations under state law, so you still must comply with all applicable provisions of state law, including warranty disclaimer requirements. Sections 455.2(a), 455.2(b)(1)(i).

Illustration 3.3: You are a dealer who is offering a used vehicle for sale and you want to offer a warranty on the vehicle. You would like to warrant only the engine, transmission and drive shaft, differential and electrical systems, and you would like to disclaim any warranties, express or implied, on the other systems of the vehicle. Can you indicate this disclaimer on the Buyers Guide?

Yes. Mark the large box to indicate that a warranty is offered on the vehicle. Indicate whether the warranty is "full" or "limited."¹⁵ Fill in the lines to show what percentage of parts and labor you will pay for repairs to covered systems. Beneath the warranty disclosure, fill in the list of covered systems, and the duration of the warranty coverage for each covered system. Below that, you may indicate that you disclaim all warranties, express or implied, on other systems or parts of the vehicle. Of course, you still must describe the warranty in a separate warranty document, including the systems covered and the systems not covered. This requirement is more fully discussed in Section IV(B) of these guidelines.

Be careful to check your state's laws for any restrictions that might apply to disclaimers of express warranty coverage or disclaimers of implied warranty coverage.

Illustration 3.4: You are a dealer who is offering a warranty on a used vehicle. The warranty that you offer covers less than 100% of the cost of labor and parts for the systems covered. Is this a "full" warranty?

No. A "full" warranty is one which meets the minimum standards for a warranty under Section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304. All other warranties are called "limited." In the example provided in this illustration, the warranty covers less than 100% of the repair costs of the covered systems, and thus does not meet one of the elements of a "full" warranty. The elements of a "full" warranty are discussed more completely in the text that accompanies footnote 8, supra. Section 455.2(a)(2)(i).

Illustration 3.5: You are a dealer who wishes to provide a warranty covering all vehicle systems shown on the reverse of the Buyers Guide. Under "systems covered" in the warranty section of the Buyers Guide, can you write "all systems shown on reverse of the Buyers Guide"?

Yes. To indicate that your warranty covers all systems shown on the reverse side of the Buyers Guide, write in the "systems covered" section that the warranty covers: "All systems shown on the reverse side of the Buyers Guide." If you choose to use this sentence, you must specifically list in the "systems covered" section any systems not covered. For example, if your warranty covers all systems shown on the reverse of the Buyers Guide, except for the fuel system, write: "All systems shown on the reverse side of the Buyers Guide, except the fuel system."

You may not use shorthand terms, such as "power train" or "drive train" to describe the systems covered by a warranty. These requirements are designed so that both you and the consumer will understand exactly what is covered by the warranty. This avoids misunderstandings and potential disputes that might otherwise occur. Section 455.2(a)(2)(ii).

Illustration 3.6: You offer a warranty that covers 100% of labor and parts, but with a \$50 deductible over the course of the warranty. Should you fill in "100%" on the Buyers Guide in the lines for percentage of repair cost covered under the warranty?

Yes. Fill in "100%" in the lines for percentage of parts and labor, and include a note to explain the deductible on the first line of the "systems covered/duration" portion of the Buyers Guide. For example, on the first line of the "systems covered/duration" portion, write: "** -- A one-time \$50 deductible will apply on repairs." See Appendix E for an example of a completed Buyers Guide with this language. Section 455.2(a)(2)(iv).

Illustration 3.7: You are a dealer who is offering a used car for sale "as is" in a state that permits such sales. The Buyers Guide displayed on the vehicle indicates that the car is offered "as is." However, after negotiating with the buyer, you agree to warrant the vehicle's engine for 90 days or 3,000 miles, whichever comes first, and to pay 75% of the cost of parts and labor involved in necessary repairs during the warranty period. Do you have to change the Buyers Guide before you give it to the buyer?

Yes. Before you give the buyer a copy of the Buyers Guide, you must change it to indicate the warranty you have agreed to provide. In the alternative, you may simply fill out a new Buyers Guide with the new information. If, however, you choose to change the "old" Buyers Guide, first cross out the "As Is -- No Warranty" box. Next, fill in the warranty portion of the Buyers Guide just as you would if you were originally offering the car with that warranty. Remember that the final warranty terms must be included in the sales contract for the car. An example of the front of a Buyers Guide like the one described in this illustration is included as Appendix D to these guidelines. Sections 455.2(a)(2)(v) (paras. 2-3), and 455.4.

Illustration 3.8: Same as above, but instead you originally offered the car with a warranty. Now you want to sell it with implied warranties only. Do you have to change the Buyers Guide before you offer the vehicle with implied warranties only?

Yes. You should cross out the warranty portion of the Buyers Guide and mark the box for the "Implied Warranties Only" disclosure. Alternatively, you could prepare a new Buyers Guide, and just mark the box next to the "Implied Warranties Only" disclosure. Sections 455.2(a)(1)(ii), 455.2(a)(2)(v) (paras. 2-3), and 455.4.

Illustration 3.9: Your dealership has a used vehicle that is still being prepared for sale. A consumer is interested in looking at that vehicle, with the understanding that it cannot be delivered until the preparations are complete. Does the vehicle need to have a Buyers Guide?

Yes. Before you offer to sell, show, or actually sell any used vehicle to a consumer, you must prepare and display a Buyers Guide in the side window of that vehicle. Therefore, you may want to prepare and display a Buyers Guide soon after you acquire the vehicle. Section 455.2(a).

Illustration 3.10: You are a dealer who makes a substantial number, but not a majority, of your sales to Spanish speaking customers. Your staff is trained to conduct sales in both Spanish and English. Should you display both a Spanish and English version of the Buyers Guide on all your vehicles?

Yes. To ensure your compliance with the Rule, it is a good idea to post both versions of the Buyers Guide if you expect that a sale could be conducted in either Spanish or English. A Spanish language Buyers Guide must be posted on a used vehicle before you begin to discuss, in Spanish, that vehicle with a customer. Therefore, as a practical way to ensure compliance, you should post both English and Spanish Buyers Guides if you make a large number of sales in both languages. Sections 455.2, 455.5.

Sales Contract and Warranty Disclosures

Illustration 4.1: When you sell a vehicle, you complete a customer order, or bill of sale, and, if the consumer finances the vehicle, a financing document prepared by a bank. Do both of these documents have to contain the contract disclosure required by § 455.3(b) of the Rule?

No. The disclosure is required only on the "contract of sale." The contract of sale is the document by which you agree to transfer title to the vehicle upon payment of the purchase price. The "financing agreement" must contain this disclosure if the document contains a clause stating that the financing document represents the complete and total agreement between the dealer and the consumer, or if the financing agreement is the only document given to the consumer to record the transaction.

List of Subjects in 16 CFR Part 455

Used cars, Trade practices.

By direction of the Commission.

Emily Rock,

Secretary.

Editorial note. -- This form, which appears in the Code of Federal Regulations in 16 CFR Part 455, is republished for the convenience of the reader.

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APPENDICES

ENDNOTES

1. 49 FR 45692 (1984). That notice included the Used Car Rule and the Commission's Statement of Basis and Purpose concerning the Rule.
2. *Id.* But see Section II(G), *infra*, concerning the application of the Rule within the State of Wisconsin.
3. 15 U.S.C. 45(m)(1)(A).
4. Staff may be contacted at the address listed in the beginning of these guidelines, under the heading "For further Information."
5. As used in these guidelines, the term "demonstrator" refers to "new" vehicles that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving. This may include use by the dealer, the dealer's employees, the dealer's corporate officers, or anyone else.
6. See Statement of Basis and Purpose, 49 FR at 45708.
7. See 52 FR 34769 (1987) (Commission declined to exempt from the Used Car Rule sales to consumers of used vehicles at auctions that are open to consumers.)
8. These standards are set out in section 104 of the Magnuson-Moss Warranty Act, 15 U.S.C. 2304. The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, in offering such vehicles for sale, dealers are not required to indicate whether the warranty offered is "full" or "limited." Rather, dealers may simply cross out the terms "full" and "limited," leaving just the term "warranty." However, all other provisions of the Used Car Rule apply to sales of such vehicles.
9. The Used Car Rule does not require that a dealer pay any specific percentage of repair or labor costs. The figure in the example is provided only for illustration.
10. For one example, see New York General Business Law Section 198-b. This provision of New York law requires dealers to give consumers written warranties covering seven mechanical systems of any used vehicle that is sold for over \$1,500.
11. See, e.g., New York General Business Law Section 198-b(b).
12. 6 CFR 455.3(b). The Spanish translation of this disclosure is: La informacion que aparece en la ventanilla de este vehiculo forma parte de este contrato. La informacion contenida en el formulario de la ventanilla anula cualquier prevision que establezca lo contrario y que aparezca en el contrato de venta.
13. See *supra* note 5 for a discussion of the term "demonstrator."
14. The Automobile Information Disclosure Act (commonly known as the Monroney Act) can be found at 15 U.S.C. 1231-33. See also the Commission's Statement of Basis and Purpose for the Used Car Rule, 49 FR at 45707 n. 234 (recognizing that dealers would have to display both the Monroney Sticker and the FTC Buyers Guide on some vehicles).
15. See *supra* text accompanying note 8 for a discussion of the terms "full" and "limited."



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