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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:

Staff Compliance Guidelines Outline

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II. What Transactions Does the Rule Cover?

- A. "Vehicle" Defined -- Section 455.1(d)(1)
- B. "Used Vehicle" Defined -- Section 455.1(d)(2)
- C. "Dealer" Defined -- Section 455.1(d)(3)
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- D. How to Display the Buyers Guide
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V. Contrary Statements -- Section 455.4

VI. State Exemption Petitions -- Section 455.6

VII. Illustrations

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 The Used Car Rule imposes a civil penalty of \$10,012 per violation (Federal Trade Commission, Bureau of Consumer Protection, 16 CFR 455.0-1). You also may receive a free copy of the Used Car Rule compliance guidelines.

These guidelines describe the requirements of the Used Car Rule and the Warranty Disclosure Rule. (These guidelines have not been revised since they were first published in 1985.)

The Used Car Rule primarily applies to dealers who sell used motor vehicles. The Warranty Disclosure Rule applies to dealers who sell used motor vehicles and to manufacturers who sell new motor vehicles.

These guidelines explain the Used Car Rule's requirements, sections of the Used Car Rule, and the Warranty Disclosure Rule's requirements. (The Used Car Rule and the Warranty Disclosure Rule are located in 16 CFR 455.0-1.)

To follow the guidelines, you should read the Used Car Rule, the Warranty Disclosure Rule, and the Illustrations. (The Used Car Rule and the Warranty Disclosure Rule are located in 16 CFR 455.0-1.)

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"

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

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 the Rule's TD t w in Formats Guides or [0% black un

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- (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 buyers' GC dealer within 90 days of the

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

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.

BILLING CODE 6750-01-M

[See Material in original]

[FR Doc. 88-11011 Filed 5-16-88; 8:45 am]

BILLING CODE 6750-01-C

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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