

**FEDERAL TRADE COMMISSION
16 CFR Part 455**

Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) requests public comments on its Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”). The Commission is soliciting the comments as part of the FTC’s systematic review of all current Commission regulations and guides.

DATES: Written comments relating to the Used Car Rule must be received by September 19, 2008.

ADDRESSES: Interested parties are invited to submit written comments relating to the Used Car Rule review. Comments should refer to “Used Car Rule Regulatory Review, Matter No. P087604” to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex H), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled “Confidential,” and must comply with Commission Rule 4.9(c).¹ The FTC is requesting that any comment filed in

¹ The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission’s General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

paper form be sent by courier or overnight service, if possible, because postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form should be submitted by following the instructions on the web-based form at: <https://secure.commentworks.com/ftc-UsedCarRuleReview>. To ensure that the Commission considers an electronic comment, you must file it on the web-based form. You may also visit <http://www.regulations.gov> to read this notice, and may file an electronic comment through that Web site. The Commission will consider all comments that www.regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and to use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. To read our policy on how we handle the information you submit - including routine uses permitted by the Privacy Act - please review the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT: John C. Hallerud, (312) 960-5615, Attorney, Midwest Region, Federal Trade Commission.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission promulgated the Used Car Rule in 1984 and the Rule became effective in 1985.² The Used Car Rule is intended primarily to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. To accomplish that goal, the Rule provides a uniform method for disclosing warranty information on a window sticker called the “Buyers Guide” that dealers are required to display on used cars. The Rule requires used car dealers to disclose on the Buyers Guide whether they are offering a used car for sale with a dealer’s warranty and, if so, the basic terms, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty. The Rule additionally provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule requires Spanish language versions of the Buyers Guide when dealers conduct sales in Spanish.

The Rule also requires other disclosures that must be printed directly on the Buyers Guide, including:

- (1) A suggestion that consumers ask the dealer if a pre-purchase inspection is permitted;
 - (2) A warning against reliance on spoken promises that are not confirmed in writing;
- and

² 49 Fed. Reg. 45,692 (November 19, 1984).

(3) A list of fourteen major systems of a used motor vehicle and the major defects that may occur in these systems.

In 1995, as part of its periodic review, the Commission amended the Used Car Rule.³ Specifically, the Commission amended the Rule by: (1) adopting several minor grammatical changes to the Spanish language version of the Buyers Guide; (2) permitting dealers to display a Buyers Guide anywhere on a used motor vehicle so long as the Buyers Guide is displayed prominently and both sides of it are readily readable; and (3) allowing dealers to obtain a consumer's signature on the Buyers Guide to acknowledge receipt.

The Rule provides for both English and Spanish Buyers Guides. In the past, Commission staff has advised dealers who conduct substantial numbers of sales in Spanish to display both English and Spanish Buyers Guides.⁴ In response to questions from industry, the Commission is seeking comments on whether the Rule should be revised to permit dealers to use a single bilingual Buyers Guide. The Commission is also seeking proposals for the design of bilingual Buyers Guides.

The reverse side of the Buyers Guide contains a pre-printed list of fourteen major systems and the defects that may occur in those systems. That list has not been changed since the Used Car Rule was promulgated in 1984. The list was promulgated from the rulemaking proceeding and from information gleaned from prior versions of the Used Car Rule. The

³ 60 Fed. Reg. 62,195 (December 5, 1995).

⁴ See Staff Compliance Guidelines, 53 Fed. Reg. 17,660, 17,664, 17,667 (Illustration 3.10) (May 17, 1988). The Staff Compliance Guidelines and other information about the Used Car Rule are available online from the Commission's Web site at: www.ftc.gov.

Commission is seeking comments on the value of the Buyers Guide's pre-printed list of major systems and defects and whether the list should be revised or eliminated.

The Commission is also seeking comments on how well the current method for disclosing unexpired manufacturer's warranties on the Buyers Guide is working. In connection with that inquiry, the Commission is seeking comments on a possible alternative Buyers Guide to aid in disclosing dealers' warranties, unexpired manufacturer's warranties, manufacturer's used car warranties, and used car warranties provided by third parties other than the manufacturer. Examples of Buyers Guides that incorporate a revised method for disclosing these various types of warranties are attached to this notice as Appendices A and B.

II. Regulatory Review of the Used Car Rule

The Commission reviews all of its rules and guides periodically to examine their efficacy, costs, and benefits; and to determine whether to retain, modify, or rescind them. This notice commences the Commission's review of the Used Car Rule.

A. General Areas of Interest for FTC Review

As part of its review, the Commission is seeking comment on a number of general issues, including the continuing need for the Used Car Rule and its economic impact, the effect of the Rule on deception in the used car market, and the interaction of the Rule with other regulations. Since the Commission's last revisions of the Rule in 1995, new used car products, such as certified used car warranties, have become increasingly popular. The Commission believes that this review is important to ensure that the Rule is appropriately responsive to any changes in the marketplace.

B. Specific Areas of Interest for FTC Review

Since the last revisions to the Rule in 1995, the Commission occasionally has received informal input regarding the efficacy of the Rule and requests for clarification about the Rule's application. Some of the questions included in this notice, therefore, address specific issues. By including these issues, the Commission intends to facilitate comment, and the inclusion or exclusion of any issue is no indication of the Commission's intent to make any specific modifications to the Rule.

III. Issues for Comment

The Commission requests written comment on any or all of the following questions. The Commission requests that responses to its questions be as specific as possible, including a reference to the question being answered, and reference to empirical data or other evidence wherever available and appropriate.

A. General Issues

- (1) Is there a continuing need for the Rule? Why or why not?
- (2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?
- (3) What modifications, if any, should be made to the Rule to increase its benefits to consumers?
 - (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the costs the Rule imposes on businesses, and in particular on small businesses?
 - (c) How would these modifications affect the benefits to consumers?

- (4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?
- (5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?
- (6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?
 - (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the benefits provided by the Rule?
- (7) How have the 1995 amendments to the Rule affected purchasers of used motor vehicles? How have the 1995 amendments to the Rule affected used motor vehicle dealers? Please provide any evidence that has become available since 1995 concerning the costs, benefits, and effectiveness of the Rule. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (8) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?
- (9) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and in particular to small businesses?
 - (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the costs the Rule impose on businesses, and in particular on small businesses?
 - (c) How would these modifications affect the benefits to consumers?

- (10) What significant costs, including costs of compliance, has the Rule imposed on businesses, and in particular on small businesses? What evidence supports the asserted costs?
- (11) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, and in particular on small businesses?
 - (a) What evidence supports the proposed modifications?
 - (b) How would these modifications affect the benefits provided by the Rule?
- (12) What evidence is available concerning the degree of industry compliance with the Rule? To what extent has there been a reduction in deceptive oral representations and unfair omissions made by used car dealers concerning warranty coverage since the Rule was issued? Please provide any supporting evidence. Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?
- (13) What modifications, if any, should be made to the Rule to account for changes in relevant technology or economic conditions? What evidence supports the proposed modifications?
- (14) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?
 - (a) What evidence supports the asserted conflicts?
 - (b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

B. Specific Issues

- (1) Should the Used Car Rule be modified to permit used motor vehicle dealers the option of using a Buyers Guide that combines both the English and Spanish language versions of the Buyers Guide into a single bilingual document? If not, why not? If so, why? If so, how should bilingual Buyers Guides be designed and formatted? How should bilingual Buyers Guides be designed and formatted to minimize consumer confusion?
 - (a) If recommending that bilingual Buyers Guides should be permitted, provide as much detail as possible about the form that the bilingual Buyers Guides should take. Provide examples of bilingual Buyers Guides for use in states that permit “as is” sales (*i.e.*, sales in which implied warranties are disclaimed) and states that prohibit “as is” sales (*i.e.*, “Implied Warranties Only” sales). Indicate the type styles, sizes, and format used in examples of bilingual Buyers Guides that are submitted.
 - (b) What benefits, if any, would bilingual Buyers Guides provide consumers? What evidence supports the asserted benefits?
 - (c) What burdens, if any, would bilingual Buyers Guides impose on consumers? What evidence supports the asserted burdens?
 - (d) What benefits, if any, would bilingual Buyers Guides provide businesses, and in particular small businesses? What evidence supports the asserted benefits?

- (e) What burdens, if any, would bilingual Buyers Guides impose on businesses, and in particular small businesses? What evidence supports the asserted burdens?
 - (f) Question 8 below discusses possible alternative Buyers Guides intended to facilitate the disclosure of manufacturer's and other third-party warranties. How would your answers to the preceding questions about bilingual Buyers Guides change if the Commission adopted a revised Buyers Guide as described in Question 8?
- (2) Should the translation of the Buyers Guide into Spanish be revised as described below? If so, why? If not, why not?
- (a) Should the term "dealer" be translated into Spanish as "concesionario," instead of "distribuidor" and "vendedor?"
 - (b) Should the term "regardless of" in the statement below the AS IS - NO WARRANTY box on the front of the Buyers Guide be translated into Spanish as "independientemente de" instead of "sean cuales sean?"
 - (c) Should the following revisions be made to the Spanish translation of terms used in the list of major defects in automobile systems on the reverse side of the Buyers Guide?
 - (i) Should the term "Frame-cracks" in the **Frame & Body** section be translated as "Grietas en el chasis," instead of "Chasis-grietas?"

- (ii) Should the term “Cooling System” in the **Cooling System** section be translated as “Sistema de enfriamiento,” instead of “Sistema de refrigeración?”
 - (iii) Should the term “Air conditioner” in the **Inoperable Accessories** section be translated as “Aire acondicionado,” instead of “Acondicionador de aire?”
 - (iv) Should the term “Defroster” in the **Inoperable Accessories** section be translated as “Desempañador,” instead of “Descarchador?”
 - (v) Should the terms “Not enough pedal reserve” in the **Brake System** section be translated as “Distancia insuficiente del pedal,” instead of “Juego insuficiente en el pedal?”
- (3) What purposes, if any, does the list of systems and major defects that may occur in a used motor vehicle on the reverse side of the Buyers Guide serve?
- (a) What benefits does the list provide to consumers?
 - (b) What burdens does the list impose on consumers?
 - (c) What benefits does the list provide to businesses, and in particular to small businesses?
 - (d) What burdens does the list impose on businesses, and in particular on small businesses?
 - (e) Should the list be retained? Why or why not?
 - (f) Should the list be modified? If so, why, and how? If not, why not?

- (4) The Rule permits dealers who opt to disclose an unexpired manufacturer's warranty to add the following statement to the Buyers Guide below the FULL/LIMITED WARRANTY boxes in the SYSTEMS COVERED/DURATION section:

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.⁵

Separately and beneath that statement, in states that permit "as is" sales, dealers may add:

The dealership itself assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverage comes from the unexpired manufacture's warranty.⁶

- (a) What benefits, if any, does the method permitted by the Rule for disclosing unexpired manufacturer's warranties provide consumers?
- (b) What burdens does the method permitted by the Rule for disclosing unexpired manufacturer's warranties impose on consumers?

⁵ 16 C.F.R. § 455.2(b)(2)(v).

⁶ Staff Compliance Guidelines, 53 Fed. Reg. 17,660 at 17,663 (May 17, 1988).

- (c) What benefits does the method for disclosing unexpired manufacturer's warranties permitted by the Rule provide businesses, and in particular small businesses?
 - (d) What burdens does the method for disclosing unexpired manufacturer's warranties permitted by the Rule provide businesses, and in particular small businesses?
 - (e) Should the current method permitted by the Rule for disclosing unexpired manufacturer's warranties be modified? If so, why, and how? If not, why not?
 - (f) Should the Rule provide an option to use a similar method for disclosing other warranties that are included in the price of the used vehicle, such as manufacturer's certified used car warranties and warranties provided by other third parties? If so, why, and how? If not, why not?
- (5) Should the optional statement provided by the Rule to indicate that a manufacturer's warranty applies be revised to alert consumers to check the warranty booklet for the expiration date of the manufacturer's warranty by stating: "Consult the manufacturer's warranty booklet for details as to warranty coverage, expiration, service location, etc?" Why or why not?
- (6) Should the Rule require dealers to indicate whether a manufacturer's warranty applies and provide information about the scope of that coverage? Why or why not? Should disclosure of manufacturer's warranties be optional as the Rule currently provides? Why or why not?

- (7) Is checking the AS IS - NO WARRANTY box to indicate that the dealer is not obligated to perform warranty service clear and understandable to consumers? Why or why not? Does checking the AS IS - NO WARRANTY box confuse consumers about whether other warranty or service coverage, such as a manufacturer's warranty, applies? Why or why not? How could the Buyers Guide be redesigned to prevent consumer confusion about the meaning of the "as is" disclosure?
- (8) Examples of revised Buyers Guides that provide a different method to disclose manufacturer's warranties and third-party warranties that are included in the price of the used car are attached as Appendices A and B. Appendix A is designed for use in states that permit dealers to sell used cars "as is," *i.e.*, without any warranty from the dealer. Appendix B is designed for use in states that prohibit "as is" sales.

The Buyers Guide attached as Appendix A states:

"AS IS" - NO DEALER WARRANTY

THE DEALER WILL NOT PAY ANY COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

If a dealer chooses to use a Buyers Guide like Appendix A and does not offer its own warranty, the dealer would check the box to indicate that the car is being offered "AS IS"- NO DEALER WARRANTY.

If state law limits or prohibits "as is" sales of vehicles or the dealer chooses to offer the vehicle with implied warranties only when offering a

car for sale in a state that permits “as is” sales, the following should be substituted for “AS IS” - NO DEALER WARRANTY, and its accompanying language:

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 bought the vehicle.

Appendix B is a Buyers Guide that uses the above disclosure to indicate that the dealer is offering implied warranties only.

If a dealer chooses to use a Buyers Guide like Appendix A or B and the dealership provides its own used car warranty, the dealer would check the DEALER WARRANTY box, indicate whether the warranty is full or limited, and identify the percentage of labor and parts that the dealer will pay for repairs:

DEALER WARRANTY

FULL LIMITED WARRANTY. The dealer will pay _ % of the labor and ___% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and

the dealer's repair obligations. Under state law,
"implied warranties" may give you even more rights.

Immediately beneath this section, the dealer would indicate the Systems Covered and the Duration of coverage for the identified systems:

SYSTEMS COVERED:

DURATION:

If the dealer does not provide its own warranty and state law permits the dealer to sell used cars "as is," in the space provided for the SYSTEMS COVERED/DURATION, the dealer may fill in (or pre-print or use a rubber stamp) the following statement: "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, manufacturer's used car warranty, or other used car warranty indicated below."

The Buyers Guide would have additional boxes below the SYSTEMS COVERED/DURATION section where the dealer could indicate whether the dealer is offering a used car with a manufacturer's warranty or other third-party warranty. If a dealer chooses to disclose manufacturer's warranties and third-party warranties using Appendix A or B, dealers would check the appropriate boxes to indicate the types of warranties that are provided as part of the sales price of the car.

□ NON-DEALER WARRANTIES

□ MANUFACTURER’S WARRANTY STILL APPLIES.

The manufacturer’s original warranty has not expired on the vehicle.

□ MANUFACTURER’S USED CAR WARRANTY APPLIES.

□ OTHER USED CAR WARRANTY APPLIES.

Consult the warranty booklet for details as to warranty contract coverage, expiration, service location, etc.

□ NO INFORMATION PROVIDED. The dealer provides no information about other warranties that may apply.

The Rule’s SERVICE CONTRACT box and corresponding explanation that a service contract is available would appear below this statement separated by a line to distinguish service contract availability from warranty coverage:

□ SERVICE CONTRACT. A service contract is available at an extra charge on this vehicle. Ask for details as to coverage, deductible, price, and exclusions. If you buy a service contract within ninety days of sale, state law “implied warranties” may give you additional rights.

(a) Should the Rule be revised to permit dealers to disclose unexpired manufacturer’s warranties, manufacturer’s used car

warranties, and other used car warranties as shown in Appendices A and B?

- (b) What benefits, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B provide to consumers?
- (c) What burdens, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B impose on consumers?
- (d) What benefits, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B provide to businesses, and in particular to small businesses?
- (e) What burdens, if any, would revising the Rule to permit dealers to disclose warranties as shown in Appendices A and B impose on businesses, and in particular on small businesses?
- (f) What alternatives, if any, should be considered? Why? If no alternatives should be considered, why not?
- (g) Does stating “AS IS” - NO DEALER WARRANTY (*See Appendix A*) instead of AS IS - NO WARRANTY make the Buyers Guide more clear and understandable to consumers? Why or why not?
- (h) Is checking the box marked “AS IS” - NO DEALER WARRANTY to indicate that a dealer does not offer its own warranty clear and understandable to consumers when a dealer also checks one or more

of the boxes indicating that a NON-DEALER WARRANTY from someone other than the dealer applies? Why or why not?

- (i) Does stating, “THE DEALER WILL NOT PAY ANY COSTS FOR ANY REPAIRS” (*See* Appendix A), instead of “YOU WILL PAY ALL COSTS FOR ANY REPAIRS” to explain “AS IS” - NO DEALER WARRANTY make the Buyers Guide in Appendix A more clear and understandable to consumers? Why or why not?
- (j) Does adding the statement “FROM THE DEALER” help show that the boxes marked IMPLIED WARRANTIES ONLY and DEALER WARRANTY apply only to warranties that may, or may not, be offered by the dealer? If so, why? If not, why not? If not, how could the format and/or wording be improved?
- (k) Does eliminating the lines for text in the SYSTEMS COVERED/DURATION section of the Buyers Guide, as shown in Appendices A and B, make it easier or more difficult to disclose each system covered and the duration of coverage for each system? Why?
- (l) If the Rule is revised to permit dealers to use the Buyers Guides in Appendices A and B, what combination of type size, paper size, and formatting, particularly the amount of space allotted for the SYSTEMS COVERED/DURATION section, should be used to accommodate the additional text and other information in the Appendices, while assuring that the Buyers Guides are clear and understandable to consumers? In particular:

- (i) Should the Rule be revised to specify smaller or larger type sizes for Buyers Guides like those in Appendices A and B than currently prescribed by the Rule? Why, or why not? If so, specify the type sizes.
 - (ii) Instead of, or in combination with, changes in type sizes, should the Rule be revised to specify that Buyers Guides like those in Appendices A and B be printed on paper larger than the currently prescribed 11" x 7 1/4" minimum? Why or why not? If so, specify minimum paper sizes, and identify type sizes if in combination with a recommended type size.
 - (iii) Instead of, or in combination with changes in type size and paper size, should the space allotted for dealers to disclose warranty coverage and duration in the SYSTEMS COVERED/DURATION section of the Buyers Guide be increased or decreased? Why, or why not? How do changes in type size and paper size affect your answer?
- (9) Does the statement "IMPLIED WARRANTIES ONLY" and accompanying text clearly disclose that the dealer offers no express warranty? If not, how could the disclosure be made clearer?
- (10) Should the Rule's type style, size, and format requirements for Buyers Guides be revised to accommodate current word processing programs? If so, why, and how? If not, why not?

- (11) What other changes to the format of the Buyers Guide should be considered to increase its benefits? What effect would such changes have on the costs or burdens imposed by the Rule? What empirical or other evidence supports opinions that such changes would or would not increase costs or burdens?
- (12) What other changes to the format of the Buyers Guide should be considered to reduce compliance costs or burdens? Would such changes have any detrimental effect on the benefits provided by the Rule? What empirical or other evidence supports opinions about whether such changes would have a detrimental effect on benefits?

List of Subjects in 16 CFR Part 455

Motor Vehicles, Trade Practices.

Authority: 15 U.S.C. 41-58, 15 U.S.C. 2309.

By direction of the Commission.

Donald S. Clark
Secretary

APPENDIX A

**[INSERT GRAPHIC OF “AS IS” BUYERS GUIDE
(FILE: BUYERSGUIDE_ASIS) APPENDIX A HERE]**

APPENDIX B

**[INSERT GRAPHIC OF IMPLIED WARRANTIES
ONLY BUYERS GUIDE (FILE: BUYERSGUIDE_IMP)
APPENDIX B HERE]**