

CENTER FOR AUTO SAFETY

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Federal Trade Commission
Office of the Secretary, Room H-113 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Used Car Rule Regulatory Review, Project No. P087604

The Used Car Rule has been aptly characterized as "little more than a consumer education campaign masquerading as significant industrywide regulation."¹ Nevertheless, consumer education campaigns have their place, and the Used Car Rule has conveyed useful point-of-sale information to consumers. The Buyers Guide's advice about getting the vehicle inspected by a technician emphasizes a crucial step in a used car purchase. The warranty information on the Guide is also useful to consumers, though like other commenters, we have long been concerned that the Guide's "as-is" language may deter aggrieved consumers from pursuing their legal rights.²

If the dealer fills out the Guide properly, the consumer receives pre-purchase information on key warranty terms, such as systems covered and duration. Unfortunately, in far too many sales the Guide provides the only documentation of warranty terms because many used car dealers do not have or offer a separate warranty documents as required by the Magnuson-Moss Warranty Act and the Used Car Rule itself. When warranty issues arise in that too frequent situation, consumers are at a disadvantage and have to again engage in a negotiation with the dealer because they didn't receive a document spelling out all key warranty terms.

Though the Center has not participated in the current rulemaking to this point, we have reviewed closely the notices and the previously filed comments. We are extremely disappointed with where this rulemaking stands. Despite all the vehicle history information that was available and becoming available by 2008, the Commission's initial proposal ignored that issue and instead made only a very modest proposal to deal with the longstanding problem of disclosing manufacturers' and other 3rd party warranty coverage under the current Rule. Despite persuasive arguments by NAAG and consumer advocacy groups for vehicle history disclosure, the Commission accepted transparently invalid arguments from dealer groups and has only now proposed to put language on the Guides to refer

¹ Former Commissioner Patricia Bailey in her dissent to the Rule's issuance, quoted in AP News Archive, May 5, 1985.

² We also concur with the consumer advocacy groups' comments that the problem would be exacerbated by the "minor wording changes designed to increase readability" (77 FR 74746, 74750 (December 17, 2012)) in the current proposal, and with the wording proposed in the groups' comments to address the problem.

consumers to a currently nonexistent website that will offer yet to be determined information on vehicle history, while relegating the third party warranty disclosures to the back of the Guide, effectively rendering them meaningless. At this point we should be engaging in reasoned discourse on the best way to disclose NMVTIS information on vehicles and thus take the Used Car Rule into the 21st century; instead we are compelled to comment on far more mundane issues to keep the Rule from going backwards.

Third Party Warranty Disclosure Needs to Be Mandatory and on the Front of the Guide

In one sense, we understand why the 3rd party warranty disclosures were moved to the back of the form: NADA's and NIADA's comments had indicated that, because of the wording of the manufacturer warranty disclosure and checking its box being optional, their members would choose not to check the box and not disclose anything about manufacturer warranties. That would make the 3rd party disclosure section superfluous so it might as well be moved to the back. The better response to that situation, however, is to alter the wording of the disclosure, make it mandatory, or both. We suggest the latter.

NADA's and NIADA's comments claimed that dealers don't know and can't easily find out the warranty coverage of a particular vehicle. While it's true that warranties are more complex than when the Used Car rule went into effect in 1985, there are now a number of inexpensive and readily available resources that give precise information on the warranties of current and past model year vehicles. Perhaps the best known of these is the JLVarranty Official Warranty Guide, www.jlvwarranty.com/owg/php, which costs \$24 or less for hard copies and \$19.99 for a phone app, and is updated at least annually. The Guide conveniently breaks out, labels, and summarizes the different categories of the manufacturer warranties, such as basic, powertrain, emissions, and restraint systems.³ If the Commission mandates disclosure of unexpired manufacturer warranties, one can be sure that more and even better products will come on the market.

It should also be noted that, even without consulting such a guide, dealers often know off the top of their heads that a particular vehicle still has applicable factory warranty coverage. One reason for that is because every car and truck from the 1995 model year on has been required to carry a 8 year, 80,000 mile warranty on three specified major emission components: catalytic converters, electronic emissions control units or computers (ECUs), and onboard emissions diagnostic devices or computers (OBDS). Thus, a dealer knows, for example, that a six model year old vehicle with under 80,000 miles carries at least an unexpired emission component warranty.

The dealers associations' comments also claimed that dealers often don't know the in-service date of a vehicle, so they can't determine what coverage is applicable even if they have information on the warranty terms. First, that claim only comes into play in the last year of the coverage of a particular vehicle component or group of components. It also ignores that a simple phone call by the dealer to the manufacturer's toll free number or the service department of an affiliated dealer will produce that information. The call can also serve to check whether the warranty has been voided for some reason

³ A sample partial page from the Official Warranty Guide appears in Appendix 1 of these comments.

and confirm the warranty coverage information the dealer has gained from other sources.⁴ As with getting information on the coverages, getting in-service date information will become even easier once the FTC announces it is mandating the disclosure of unexpired factory warranties.

Besides the factory warranty coverage disclosure being made mandatory, the wording of that box on the FTC's proposed Buyers Guide also needs to be changed. We prefer: "The manufacturer's original warranty has not expired on some components of the vehicle." We think this is more consistent with the different coverages that are in current warranties. With the FTC's language, we believe dealers tend to balk at saying the warranty is unexpired when perhaps only restraint system coverage remains in effect. They have reason to balk because consumers are likely to interpret the Commission's statement of warranty coverage as the basic warranty and may become angry in the above example when they learn that only the restraint system is still covered.

Our position on disclosure of manufacturers' original warranties is a simple. This is very material information to consumers that dealers know or should know.⁵ Therefore, the Rule should require it to be disclosed.

The disclosure of the manufacturer's certified used vehicle warranty also needs to be mandatory in those sales in which such warranties are issued. There simply is no excuse to do otherwise. If another third party warranty is part of the transaction, checking the "other" box should also be mandated.

Doing the above would make the third party warrant disclosures very meaningful for consumers and necessitate moving the disclosures back to the front of the form, presumably with the adjacent service contract disclosure, where they clearly belong. If the Commission is concerned about space, we have several suggestions. First, the space for the optional stock # disclosure can be moved up onto the line with the year, make, model, and VIN. Second, the dealers don't need so much space to list the systems covered in their warranties. Our experience is that these are not complex warranties that would necessitate so much space. Some dealers will just have to take an extra moment to write somewhat smaller instead of hastily scrawling huge entries.

⁴ We are only calling for the disclosure of coverages that are transferable to all subsequent purchasers. If a particular original coverage transfers to second purchasers but not subsequent purchasers, we would not require dealers to count the number of purchasers.

⁵ Frankly, the only possible difficulty we see with mandatory warranty disclosure stems from the emission warranties mandated in some states. Most of those required warranties aren't as long as the federal 8/80 specified emission component warranty, however, so shouldn't present a problem. One that is longer is the 15 year/ 150,000 mile warranty on emission-related components in PZEVs (partial zero emissions vehicles). We're confident that by the time the rest of a PZEV's factory warranty coverages expire, the industry will be experienced enough with them that proper disclosure of the PZEV's emission warranty won't be a problem. If the Commission disagrees, the answer is to put an appropriate disclaimer on the Guide that the warranty disclosure doesn't include some state mandated emissions warranties, not to abandon mandatory disclosure.

The Rule Should Be Amended to Include Information on the Buyers Guide to Access Two Significant New Databases on Recalls and Technical Service Bulletins

Though the Commission may have missed it, The Moving Ahead for Progress in the 21st Century Act (P.L. 112 -141) ("MAP-21") enacted last summer mandated two new and invaluable sources of information on conditions and defects in used vehicles. First, Section 31303 of MAP-21, included in Appendix 2 to these comments, requires the Department of Transportation to require a VIN searchable database on the internet for outstanding safety recalls on any vehicle in use and, in consultation with other agencies, promote consumer awareness of the information. DOT is obligated to issue a final rule by July 14, 2013, so the FTC can coordinate this Rule to require the Buyers Guide to include a link to the DOT searchable database.

Second, Section 31303 of MAP-21, also in Appendix 2, amended 49 U.S.C. Sec. 30166(f) to require DOT to post on the internet copies of every Technical Service Bulletin (TSB) issued by auto manufacturers and an index by make, mode, and year, giving a summary of each TSB. This is a veritable gold mine of information on defects in used vehicles. The FTC should coordinate with DOT so that a link to the information, if available, is posted on the Buyers Guide. This vital information on a vehicle being considered for purchase and is also very useful after a purchase.

Putting this information on Buyers Guides will result in information on these two very important new databases reaching tens of millions, perhaps more than 100 million purchasers and prospective purchasers of used cars each year. To the extent the size of the Buyers Guide needs to be increased to accommodate this information, we believe such increase would be very worthwhile. Finally, we should note that both of these databases are also very useful to used car dealers.

The Rule Should Require a Dealer to Provide Prospective Purchasers a Copy of Any Vehicle History Report in its File on the Vehicle

The dealer associations have argued strenuously that the quality of information in vehicle history reports isn't high and that the definitions of key terms like salvage vary from state to state. They studiously ignore that in most used car sales they have information and the consumers do not. The FTC should take a step toward leveling the field and restoring confidence to car shoppers by requiring that dealers disclose whether they have a vehicle history report on file, whether it be Carfax, AutoCheck, NMVTIS, etc. If they have one, they must give a copy to a prospective purchaser. This can be readily accomplished by a box on the Buyers Guide disclosing whether they have a report and that a copy is available upon request. That would be a small step, but it would be far more significant in improving the used car marketplace than the Commission's proposals after more than four years of rulemaking.

Respectfully submitted,

Evan W. Johnson, Counsel

Clarence M. Ditlow, Executive Director

Appendix 1

Official Warranty Guide				
Model Year	2002-2004	2005	2006	2007
Basic	4/50,000	4/50,000	4/50,000	4/50,000
Powertrain	4/50,000	4/50,000	6/70,000	6/70,000
Corrosion	5/Unlimited	5/Unlimited	5/Unlimited	5/Unlimited
Hybrid Components	N/A	N/A	N/A	N/A
Emission Components	Specific Components 8/80,000: Manufacturer covers emissions components under basic warranty. Emissions coverage may vary by state. Refer to owners manual for specific details.			
Powertrain	Transferable at no	Transferable at no	Transferable at no	Transferable at no

Page Example

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Appendix 2 - MAP-21 Provisions

SEC. 31301. PUBLIC AVAILABILITY OF RECALL INFORMATION.

(a) VEHICLE RECALL INFORMATION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall require that motor vehicle safety recall information—

- (1) be available to the public on the Internet;
- (2) be searchable by vehicle make and model and vehicle identification number;
- (3) be in a format that preserves consumer privacy; and
- (4) includes information about each recall that has not been completed for each vehicle.

(b) RULEMAKING.—The Secretary may initiate a rulemaking proceeding to require each manufacturer to provide the information described in subsection (a), with respect to that manufacturer’s motor vehicles, on a publicly accessible Internet website. Any rules promulgated under this subsection—

- (1) shall limit the information that must be made available under this section to include only those recalls issued not more than 15 years prior to the date of enactment of this Act;
- (2) may require information under paragraph (1) to be provided to a dealer or an owner of a vehicle at no charge; and
- (3) shall permit a manufacturer a reasonable period of time after receiving information from a dealer with respect to a vehicle to update the information about the vehicle on the publicly accessible Internet website.

(c) PROMOTION OF PUBLIC AWARENESS.—The Secretary, in consultation with the heads of other relevant agencies, shall promote consumer awareness of the information made available to the public pursuant to this section.

SEC. 31303. PUBLIC AVAILABILITY OF COMMUNICATIONS TO DEALERS.

(a) INTERNET ACCESSIBILITY.—Section 30166(f) of title 49, United States Code, is amended—

- (1) by striking “A manufacturer shall give the Secretary of Transportation” and inserting the following: “(1) IN GENERAL.—A manufacturer shall give the Secretary of Transportation, and the Secretary shall make available on a publicly accessible Internet website,”; and
- (2) by adding at the end the following:

“(2) INDEX.—Communications required to be submitted to the Secretary under this subsection shall be accompanied by an index to each communication, that—

- “(A) identifies the make, model, and model year of the affected vehicles;
- “(B) includes a concise summary of the subject matter of the communication; and
- “(C) shall be made available by the Secretary to the public on the Internet in a searchable format.”