

Buyers Guide Gets a Tune-Up

December 23, 2016 | [Daniel J. Laudicina](#)

After enough fits and starts to make a 1971 Ford Pinto with a bad timing belt look like a high performance vehicle by comparison, on November 18, 2016 the Federal Trade Commission published its Final Rule amending the Used Motor Vehicle Trade Regulation Rule ("Used Car Rule").

Way back in 2008 (yes, even before Barack Obama was sworn in as the 44th President of the United States), the FTC commenced a regulatory review of the Used Car Rule to determine its effectiveness and whether it should be amended. For more than 30 years, the Used Car Rule has required dealers to display a window sticker, called a "Buyers Guide", on used vehicles offered for sale. The Buyers Guide is designed to inform the consumer about warranty coverages, or lack thereof, on vehicles offered for sale. The Buyers Guide, however, has not been updated from its original version, and many believed changes could improve consumers' awareness and understanding of warranty coverage.

During its review of the Used Car Rule, the FTC received comments from a variety of interested parties on issues such as updating the list of covered systems and defects on the back of the Buyers Guide (to reflect manufacturing developments and parts that did not exist at the time the original Buyers Guide was drafted), disclosing non-dealer warranties offered by third parties (including manufacturers), and adding a statement to the Buyers Guide advising consumers about the availability of vehicle history reports like those available from Carfax, Inc.

In December 2012 (just before President Obama's *second* inauguration; my how time flies), after review of the Rule and consideration of comments it received, the FTC issued a notice of proposed rulemaking to amend the Used Car Rule. The FTC proposed to include a statement on the Buyers Guide advising consumers about the availability of vehicle history reports and directing consumers to an FTC website for additional information about the reports. The proposed rule also would have changed how "As Is" sales are described on the Buyers Guide, and added a Spanish language statement to the Buyers Guide advising Spanish-speaking consumers to ask for a Spanish language version of the Buyers Guide.

The FTC eventually supplemented its original proposal with a second notice of proposed rulemaking in 2014. The supplemental proposal would have required dealers who had obtained vehicle history reports to indicate that they had done so on the Buyers Guide and would require dealers to provide a copy to a consumer who requested the report. In addition, the FTC proposed further amendments to the "As Is" statement, and requested comments on adding boxes to the Buyers Guides for dealers to disclose manufacturer and other third party warranties.

The Final Rule adopts the FTC's initial proposal regarding vehicle history reports. Instead of requiring dealers who have obtained vehicle history reports to disclose that they have done so (as proposed in

the 2014 supplemental notice of proposed rulemaking), the Final Rule adds a statement to the Buyers Guide encouraging consumers to seek vehicle history information and directing consumers to an FTC website for more information. In addition, the Buyers Guide now includes a statement directing consumers to check for open safety recalls by visiting safecar.gov.

The FTC also revised the "As Is" statement, adopting the following language:

AS IS - NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE ANY WARRANTY FOR ANY REPAIRS AFTER SALE

This change to the "As Is" language, as well as a change to add boxes to the front of the Buyers Guide where dealers can disclosure manufacturer and other non-dealer warranties, clarifies that, although the dealer gives no warranties and is not liable for repairs when it sells a vehicle "As Is", the vehicle still may be covered by third party warranties that provide benefits to the consumer in the event of mechanical breakdowns.

The FTC also revised the "Implied Warranties Only" disclosure for jurisdictions that prohibit "As Is" sales, and amended the Buyers Guide to include the Spanish language notice advising Spanish-speakers to ask for a Spanish version of the Buyers Guide. The Final Rule also adds air bags and catalytic converters to the list of major defects that may occur in used vehicles listed on the back of the Buyers Guide.

The FTC also provided updated versions of the Buyers Guide in the Final Rule, which reflect the changes to the Used Car Rule. The Final Rule permits dealers to use their existing stock of the "old" version of the Buyers Guide until January 27, 2018, though they can begin using the new versions before that date. As of January 27, 2018, however, dealers must use the updated versions of the Buyers Guide that the FTC published in its Final Rule.

Though the process was a lengthy one, it is clear that the FTC took great care and consideration of many divergent views in updating the Used Car Rule. The new Buyers Guide should prove to be an improvement over the existing version from the consumer's perspective, as it more clearly identifies warranty coverage and provides additional resources (such as websites to check for recalls and learn about vehicle history reports) that will assist in shopping for used vehicles. And, in the long run (sorry about the pun), that serves both consumers and dealers.

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