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Heading into a new era, FIADA puts its focus on three key areas: increasing membership, building leaders and growing the PAC. Read President Chris Leedom's vision for the future on **PAGE 4**.

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# The FTC Used Car Rule and Window Sticker Made Easy

Correctly completing the Buyer's Guide Window Sticker and following instructions of the FTC Used Car Rule should be a part of every dealer's compliance protocol. Make sure you are doing it right and staying out of trouble.

BY KEITH WHANN

**W**hile there are many aspects to a motor vehicle sale, one area that continues to pose compliance challenges for dealerships is the correct way to offer a warranty. While the concepts in this area are relatively straightforward, the issue becomes complicated because of the various federal and state regulations that often have an overlapping effect on the subject matter. The Uniform Commercial Code, the Magnuson-Moss Warranty Act, and the FTC Used Car Rule each impose specific requirements on dealerships when offering or disclaiming warranties. In addition, state UDAP statutes generally require that every retail sale of a motor vehicle be preceded by a written contract that contains all of the agreements of the parties, including all material statements, oral or written, made prior to obtaining the customer's signature on the contract. With respect to the sale of a used motor vehicle, the Buyers Guide is perhaps the key document concerning warranty issues and can provide the dealer with a roadmap to the other warranty related disclosures and documents that must be used in the transaction. Despite the fact that the Federal Trade Commission has issued a publication, A Dealer's Guide To The Used Car Rule, which provides a copy of the proper format for the Buyers Guide and covers in detail many of the issues pertaining to proper completion of the Buyers Guide, our review of Buyers Guides submitted from motor vehicle dealerships across the Country indicates that dealers are still having numerous compliance problems.

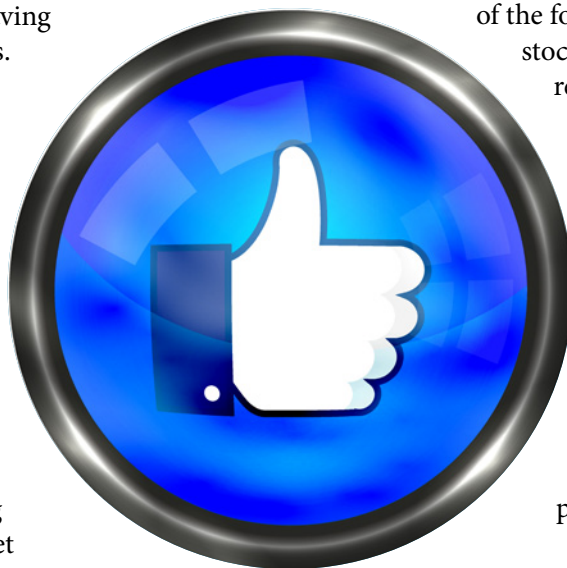
The Used Car Rule was enacted to prevent and discourage oral misrepresentations and unfair omissions of material facts by used motor vehicle dealers concerning warranty coverage. The main purpose of the Guide is to provide important information to consumers about used vehicles they are considering purchasing and to ensure that consumers get

information in writing about any warranty protection they have if there is a problem with the vehicle. Dealerships are required to post a Buyers Guide on every used vehicle before it is offered for sale. A vehicle is considered used under the Rule if it has been driven more miles than are necessary to deliver it to an ultimate purchaser.

A used vehicle is offered for sale when the dealer allows a customer to inspect it for the purpose of buying it, even if it is not fully prepared for delivery. The Buyers Guide must be prominently and conspicuously placed on or in a vehicle when it is made available for sale, and in such a way that both sides of the Guide are readable. The layout for the Buyers Guide is set forth in the Rule. The dealership must use the wording, type style, type sizes and the format as specified in the Rule. Furthermore, the Guides must be printed in one hundred percent black ink on white paper cut to at least eleven inches by seven and one-quarter inches. Colored ink may be used to fill in the blanks on the Guide. It may be removed during a test drive, but it must be posted again as soon as the test drive is over.

Dealers must give specified vehicle and dealer information on every Buyers Guide. With respect to the vehicle information that must be included, the dealer must fill in the vehicle's make, model, model year, and vehicle identification number (VIN) that are located at the top of the form. The dealer may also write in a dealer stock number if it wishes to do so. On the reverse side of the Buyers Guide, the dealer must fill in the name and address of the dealership and the name and telephone number of the person the consumer should contact in the event that he or she has complaints about the vehicle. This information can be pre-printed on the Buyers Guide.

In addition to providing vehicle and dealer information, the dealer must also state whether or not a warranty is being provided to the consumer and, in the event



*Continued on Page 22.*

that a warranty is being provided, describe the warranty coverage. There are two versions of the Buyers Guide: One for states that permit “as is” sales and another for states that limit or prohibit dealers from disclaiming the implied warranties in connection with the sale of a motor vehicle. If state law allows it, and the dealer chooses not to offer a warranty, written or implied, the dealer must use the “As Is” version and check the box next to the heading “As Is-No Warranty” on the Guide. If the state law limits or prohibits the elimination of implied warranties, the dealer must use the “Implied Warranties Only” version and check the box next to the “Implied Warranties Only” heading if the dealer does not offer a written warranty.

If the dealer offers the vehicle with an express warranty, it must check the box next to the heading “Warranty” and fill out the remaining portion of that section of the Buyers Guide. Warranties that are required by state law must also be disclosed in this section. If a warranty is offered with the vehicle, the dealer must briefly describe the warranty terms in the space provided. This description must include the following information: Whether the warranty is “Full” or “Limited”; what systems are covered and for how long; whether the manufacturer’s warranty still applies; and what percentage of costs the warranty covers.

The FTC’s Used Car Rule sets forth five points that must be considered to determine whether the warranty offered is “Full” or “Limited”. For a warranty to be considered “Full”, warranty service must be provided to anyone who owns the vehicle during the warranty period free of charge when necessary, even for services like removing and reinstalling a system covered by the warranty. The consumer must be able to choose either a replacement or a refund if the vehicle cannot be repaired after a reasonable number of tries. The consumer may not be required to take any action to receive service, except to give notice that service is needed, and service must be rendered after notice unless the warrantor can demonstrate that it is reasonable to require the consumer to do more than give notice. Finally, the length of implied warranties must not be limited. If any of these conditions do not apply, the warranty is considered “Limited”. Most warranties offered by motor vehicle dealerships will traditionally fall within the Limited Warranty category.

Once the dealer determines the type of warranty it is offering, it must specify the systems covered by the warranty and list the duration of the warranty for each system. The dealer must state specifically each system that is covered by the warranty in the left-hand column on the Buyers Guide. The Rule prohibits the use of shorthand

phrases such as “drive-train” or “power-train” when it is not clear what specific components are included within the definition of the terms. Keep in mind also that the systems covered should coincide with the systems that the dealership lists in the separate limited warranty document required by the Magnuson-Moss Warranty Act. In the right hand “duration” column, the dealer must state how long the warranty lasts for each warranted system. If all systems are warranted for the same length of time, the dealer is only required to state the duration once.

Communicating the percentage of parts and labor costs that the warranty covers is relatively simple. The dealer merely fills in the percentage of parts and labor costs it wishes to cover. If a deductible applies, the dealer should put an asterisk by the number (i.e. 100%\*) and explain the deductible in the space provided under the “Systems Covered/Duration” section. A sample explanation of a deductible may read as follows: “\*A \$50.00 deductible applies to each repair visit”.

If a manufacturer’s warranty on the vehicle has not expired, the dealer should disclose this fact by adding the following paragraph below the “Full/Limited Warranty” disclosure: “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.” If the consumer must pay a fee to obtain coverage under the manufacturer’s warranty, then the dealer may not state that a warranty is being provided. If the dealer provides a warranty in addition to the balance of the manufacturer’s warranty, it should explain the terms of the warranty on the Buyers Guide as well. If the dealer offers its customers a service contract for repair coverage and state law permits, the dealer may check the box beside “Service Contract”.

Because the Buyers Guide is completed prior to offering a motor vehicle for sale, there may be instances when as part of the negotiation process the dealer offers a warranty that differs from that stated on the Buyers Guide posted in the vehicle. If that is the case, the dealer may modify the Buyers Guide to reflect the agreement reached between the dealer and consumer, in which case both the consumer and an authorized dealership representative should initial any such changes, or the dealer may complete a new Buyers Guide. If a dealer conducts a used car transaction in Spanish, a Buyers Guide written in Spanish should be posted on the vehicle prior to offering it for sale.

The information on the final version of the Buyers Guide is incorporated in the contract for each dealer sale of a used

vehicle to a consumer. Information on the Buyers Guide expressly overrides any contradictory statement in the contract. In order to inform consumers of this fact, dealers must include the following statement or language similar to the following on each and every Buyers Order or purchase contract for a used vehicle: “ 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.”

The Rule also requires dealers to give the purchaser a copy of the Buyers Guide at the time of the sale and contains penalties for non-compliance. The dealer may include a signature line on the Buyers Guide and ask the buyer to sign to acknowledge that he or she received a copy, but a signature line is not required by the Rule. If the dealer opts for a signature line, the following statement must appear in close proximity to the signature line: “I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.” The signature line and required disclosure must appear in the space containing the name of the individual

to be contacted in the event of complaints after the sale. Dealers who violate the FTC Used Car Rule may be subject to statutory penalties of up to \$11,000 per violation and various other enforcement actions, including civil penalties and state and federal enforcement actions.

Many dealerships struggle with how to comply with the various disclosure requirements and maintain consistency throughout their forms. In order to comply with all of the state and federal warranty laws, the dealership must ensure that the Retail Buyers Order, FTC Buyers Guide and Limited Warranty Document contain the required disclosures and those disclosures must be consistent and properly integrated into the appropriate forms. Remember, all material statements (including warranty information) must be integrated into the Retail Buyers Order; the Buyers Guide must communicate whether a warranty is being offered and, if so, the type of warranty offered; and, if a Limited Warranty is offered by a dealership, a separate Limited Warranty Document must be provided in accordance with the Magnuson-Moss Warranty Act.

*Keith Whann is a leading national authority on dealer and consumer protection issues facing the automobile industry. Read more of his articles at [www.keithwhann.com](http://www.keithwhann.com).*



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