

defects disclosure requirement will not provide used car buyers with a reliable source of information concerning a car's mechanical condition and that the provision would be exceedingly difficult to enforce."²⁹ The Commission determined that the warranty and "As-Is" disclosures—along with the warnings about spoken promises and the pre-purchase inspection notice—are effective remedies for the deceptive practices occurring in the used car industry.³⁰ No new information was provided in this review on whether provisions requiring disclosure of known defects provide substantial information benefits in practice, nor did the Commission staff's independent review of available information contradict this determination.³¹ The only pertinent evidence regarding this issue relates to Wisconsin's experience with its statute.

The SBP indicates that during the original rulemaking the Commission examined Wisconsin's experience with its used car rule, which requires dealers to inspect their cars and to disclose the results of the inspection. This examination revealed that 51% of Wisconsin consumers still ultimately experienced repair problems not identified at the time of purchase.³²

The Commission was aware of this information when it promulgated the Rule. There is no new evidence indicating that reliable information would be disclosed if such a provision were required or that efficient enforcement would be feasible. Based on the foregoing, the Commission has determined that changing its original position on defect disclosures is unnecessary.

B. Requiring Dealers To Keep Copies of the Buyers Guide and Requiring a Signature Line

i. *Summary of Comments.* Both NACAA and the Iowa Attorney General suggested amending the Rule to require dealers to obtain a consumer signature on the Buyers Guide to ensure receipt of the document, and to retain copies of the signed Buyers Guide.³³ Both

contended that enforcement of the Rule would be easier because the absence of a signed Buyers Guide in the dealer's records would create the inference that no Buyers Guide was provided. Further, the dealer copy would be evidence of the warranty disclosures that were made. On the other hand, NCLC suggested that some dealers already have consumers sign the back of the Buyers Guide at the close of the deal in an attempt to cover themselves for failing to post Buyers Guides in vehicles earlier as required by the Rule.³⁴ NCLC stated that such a requirement could undermine the intent of the Rule because signing a piece of paper, perhaps as part of signing a stack of papers at closing, does not prove that the Buyers Guide was posted on the vehicle, that the Buyers Guide was given to the consumer at an appropriate time, or that the buyer was apprised of the warranty terms.

ii. *Discussion.* In initially approving the form of the Buyers Guide, the Commission determined that "a uniform method of disclosure will alleviate confusion and possible deception which might result from inconsistent versions of the Buyers Guide." SBP at 45709. Consequently, the Rule does not allow dealers to modify the format of the Buyers Guide. In response to dealer requests, however, staff has informed dealers, through informal staff opinion letters, that staff was not likely to recommend enforcement actions against a dealer asking for a consumer's signature on the back of the Buyers Guide.

Allowing a signature to be obtained on the back of the Buyers Guide was permitted to assist dealers who wanted protection against consumer claims that they had failed to provide Buyers Guides, as required by law.³⁵ From the dealers' perspective, one effective way to document that a Buyers Guide was received by a consumer is to obtain the consumer's signature and keep a copy of the signed Buyers Guide in their files. Thus, there is now considerable incentive for dealers to obtain signatures. Requiring a signature to be obtained appears unnecessarily burdensome.

The Commission also notes that the presence or absence of a signature on a Buyers Guide, by itself, does little to ensure that the Buyers Guide will be posted as required by the Rule. There is

no benefit unless dealers also are required to keep signed copies, any omissions thereby demonstrating noncompliance. However, the Commission does not believe the benefits of a mandatory signing requirement along with a recordkeeping provision are likely to justify the costs those requirements would impose.³⁶

Dealers, however, may want to obtain signatures and maintain copies of the Buyers Guide in their files. The Commission staff's enforcement advice permits this, but such advice is not necessarily widely known. The Commission, therefore, is amending the Rule to allow an optional signature line on the back of the Buyers Guide. To ensure that the customer's signature is not misused, and to put dealers on notice that obtaining a signature does not satisfy all of the Rule's requirements, the optional signature line is permitted only when accompanied by language in immediate proximity to the line stating: "I hereby acknowledge receipt of the Buyers Guide at the closing of this sale."³⁷

C. Scope of the Rule

1. Private Sales

NIADA suggested that the FTC require that everyone display a Buyers Guide in any used motor vehicle that is advertised for sale.³⁸ This issue was thoroughly considered during the original rulemaking. As noted in the SBP, private parties generally do not offer warranties, and therefore, at least as to this issue, it is unlikely that there would be any misunderstandings. Also,

³⁶ The issue of requiring dealers to maintain copies of the Buyers Guide was considered in the original proceeding. In an effort to minimize the Rule's recordkeeping requirements, the Commission decided not to require dealers to maintain copies. The primary thrust of the Rule was to provide pre-sale information about warranty coverage and to ensure that a copy of the Buyers Guide was given to the purchaser. The Commission concluded the Rule would achieve these results without a recordkeeping requirement. Dealers, of course, are free to maintain whatever records they believe are appropriate, and many in fact do keep copies. Further, recent legislation amending the Paperwork Reduction Act requires agencies to attempt to reduce the paperwork burden associated with their regulations. Adding a recordkeeping requirement would constitute a new paperwork burden.

³⁷ Dealers are advised that the customer's signature will be viewed merely as an acknowledgement that the customer has received the Buyers Guide, which is only one of a dealer's duties under the Rule. The dealer is still responsible for ensuring that posting occurs when a vehicle is offered for sale. Further, the dealer has the responsibility to ensure that any warranty terms that the dealer and the buyer negotiate are reflected on the Buyers Guide, as required by section 455.3(a) of the Rule. This is a non-substantive amendment that does not require Magnuson-Moss rulemaking procedures, as specified in section 18 of the FTC Act, 15 U.S.C. 57a.

³⁸ B-7 at 3.

²⁹ *Id.* at 45712.

³⁰ *Id.*

³¹ For example, a literature search for economic research on "defects disclosures" turned up two titles, one an FTC working paper, the other a dissertation from a student at the University of Wisconsin. The two studies both use data from the 1970's (pre-Used Car Rule SBP) and neither finds a beneficial effect of the disclosures on the used car market.

³² During the rulemaking, the Commission considered the results of a study conducted in Wisconsin, involving surveys of both dealers and consumers. See, e.g., SBP at 45712.

³³ B-24 at 3; B-15 at 3-4.

³⁴ B-23 at 8-9.

³⁵ Although some dealers only give consumers the Buyers Guide at closing and do not post, Commission investigations reveal that some consumers claim that they were not provided with a copy of the Buyers Guide, when, in fact, they were.