

State Attorney General's Office also noted that the Commission's "As-Is" version of the Buyers Guide does not accurately reflect Washington contract law on valid disclaimer of implied warranties, thus creating a conflict.<sup>104</sup>

ii. *Discussion.* The comments indicated that to the extent there is any overlap between the Rule and state law, it is generally not a significant problem. The "conflict" noted by the Washington Attorney General has been addressed by the Commission staff in correspondence with the Attorney General. As was explained in the staff's letter, the purpose of the posted Buyers Guide is to show consumers what warranty coverage a dealer is offering. The Rule also requires the dealer to provide the buyer with a copy of the Buyers Guide showing the final warranty coverage agreed to. If, under Washington State law, an "As-Is" sale has not been properly consummated, the final version of the Buyers Guide should note that the car is being sold with implied warranties.<sup>105</sup> Because the Used Car Rule does not conflict with state consumer protection statutes in any significant way, there is no need for Commission action.

#### Questions Six and Ten

Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

How many used vehicles (as defined by Section 455.1(d)(2) of the Rule) are sold annually in the United States?

i. *Summary of Comments.* The number of used cars sold annually is much larger now than when the Rule was promulgated.<sup>106</sup> Based on information NADA submitted, franchised dealerships accounted for nearly 10 million used car sales in 1993 (9,836,800) and NIADA reported another 16 million sales were made by independent dealers. NIADA's information indicated that 25.9 million used vehicles were sold by independent and franchised dealers in 1992.<sup>107</sup>

issue was addressed in the discussion at Part IV, Question 2, E, *supra*.

<sup>104</sup> B-17 at 3. See also discussion at Part IV, Question 2, E, *supra*.

<sup>105</sup> See staff Opinion Letter to Robert F. Manifold, Division Chief, October 12, 1989.

<sup>106</sup> In the original rulemaking, the Commission noted that in 1979, "two of every three cars sold in the United States were used. Consumers in that year spent \$66.7 billion, including the value of trade-ins in purchasing 18.5 million used cars from all sources." SBP at 45695.

<sup>107</sup> B-7, see attachment to comment entitled "Used Car Sales." Other sources indicate that the dollar amount of used car sales covered by the Rule reached \$281.5 billion in 1993 and \$289.2 billion in 1994. See Used Gold Reference Guide, Chapter

Franchised dealers report that the biggest part of both their profit and their volume is coming from their used, not new, vehicle sales. "New car dealers sold more used vehicles than new for the first time in 1989, and since then relative used-car volume has grown steadily."<sup>108</sup>

NIADA noted that economic conditions within the industry have improved, but was unable to quantify whether the changed conditions have had an impact on the Rule. Other comments noted changes in the relevant technology and/or economic conditions that may have affected the Rule. For example, NCLC noted a significant increase in the leasing of new and used cars in support of its recommendation that Buyers Guides be posted on leased vehicles. NCLC also pointed to the proliferation of computers and copying machines within the industry, concluding this should make it easier for dealers to comply with the Rule.<sup>109</sup> Reynolds & Reynolds noted that many computer systems have the ability to print the form for a dealer, thereby reducing time/energy demands upon dealers to fill out the Buyers Guide.<sup>110</sup> Another comment noted that car manufacturers have done a better job of conveying warranty information and covered systems to dealers.<sup>111</sup>

The Iowa Attorney General noted that since vehicles are more complex than ever, repair costs have increased. The Washington Attorney General noted that both the demand for and price of used vehicles have been driven up because new cars are becoming increasingly expensive.<sup>112</sup> Thus, warranty coverage is more important to consumers than ever before, and the need for the Rule is greater than in the past.<sup>113</sup> Similarly, most of the comments said there was a continuing need for the Rule because of the size of the industry.

ii. *Discussion.* The economic changes in the industry—the growth in used car sales, the increased prices of used cars,<sup>114</sup> and the rising cost of repairs—make warranty coverage an important consideration in a sales transaction. The changes addressed in the comments demonstrate that the reasons for promulgating the Rule continue to exist.

7, p. 3, CNW Marketing Research, Bandon, Oregon, 1994.

<sup>108</sup> *Id.*

<sup>109</sup> B-23 at 5.

<sup>110</sup> B-20 at 2.

<sup>111</sup> *Id.*

<sup>112</sup> B-17 at 3.

<sup>113</sup> B-15 at 5.

<sup>114</sup> According to CNW Marketing Research, the average sales price for a used car sold by a franchised dealer was \$11,820, and \$6,835 for an independent dealer, in 1994.

At the same time, the comments noted that technological changes have made it easier for dealers to comply with the Rule.

#### Question Twelve

Should the Rule's requirement that the Buyers Guide be posted in a side window of a used vehicle, as set forth in Section 455.2(a)(1) of the Rule, be modified to allow posting in a different location (for example, in the rear window of a pickup truck or other vehicle without side rear windows), as long as the Buyers Guide is conspicuous and both sides may be readily viewed?

i. *Summary of Comments.* The comments generally supported modifying the Rule as suggested. NADA recommended that the Rule afford some flexibility in the placement of the guide, allowing it to be placed elsewhere than in a side window. NCCE suggested that enforcement focus on the availability and accessibility of the information "and not on the trivial aspects of the regulation such as location of the information."<sup>115</sup>

One consumer protection group noted that if there are no side rear windows, the Buyers Guide should be placed in the front window.<sup>116</sup> One Attorney General supported the modification, noting that the Rule should allow for dealers to post the Buyers Guides in the rear windows of pick-up trucks and other vehicles lacking side rear windows to offer the dealers some flexibility.<sup>117</sup> The Michigan Secretary of State supported the amendment permitting the posting of Buyers Guides in other than the side window as long as the guide is prominently displayed and both sides can be readily viewed by a purchaser.<sup>118</sup> Other comments also supported the proposed modification of the Rule.<sup>119</sup>

ii. *Discussion.* The Commission is amending the Rule to delete the side window posting requirement.<sup>120</sup> Dealers instead will be required to post Buyers Guides prominently and in plain sight anywhere on the vehicle as long as both sides are accessible. This amendment affords dealers greater flexibility in posting Buyers Guides on all vehicles, not just pickup trucks or vehicles without side windows. For example,

<sup>115</sup> B-12 at 2.

<sup>116</sup> B-23 at 6-7.

<sup>117</sup> B-15 at 5.

<sup>118</sup> B-14 at 1.

<sup>119</sup> B-17 at 5, B-19 at 2, B-20 at 2.

<sup>120</sup> Because this amendment does not change the substantive rights afforded by the Rule or significantly affect the obligations of dealers, the Commission has concluded that section 18, 15 U.S.C. 57a, rulemaking proceedings are unnecessary to issue this amendment.