

NORTHERN KENTUCKY UNIVERSITY  
LIBRARY

THE FTC'S USED CAR RULE

(ARCHIVED--10/21/83)

ISSUE BRIEF NUMBER IB81159

AUTHOR:

Bruce K. Mulock

Economics Division

THE LIBRARY OF CONGRESS  
CONGRESSIONAL RESEARCH SERVICE  
MAJOR ISSUES SYSTEM

COMPLIMENTS OF  
**Gene Snyder**

GOVERNMENT DOCUMENTS  
COLLECTION

DATE ORIGINATED 10/26/81  
DATE UPDATED 10/14/83

FOR ADDITIONAL INFORMATION CALL 287-5700



## ISSUE DEFINITION

New life was breathed into the Federal Trade Commission's (FTC) used car rule on July 6 when the Supreme Court affirmed a lower court ruling that the so-called legislative veto power that Congress granted itself in 1980 over any rules the agency might subsequently develop is unconstitutional. The rule, which calls for used car dealers to disclose (on a window sticker) warranty information and "known" defects, seemingly had been killed in May 1982 when both the House and Senate passed concurrent resolutions of disapproval. The congressional action followed an intensive and expensive lobbying effort supported by many of the Nation's 57,000 businesses that sell used cars.

The rule which was finally adopted by the Commission after more than 5 years of hearings, debate, and deliberation, is considerably weaker than earlier versions. Its purpose, however, remains the same: to prevent and discourage oral misrepresentations and deceptive omissions of material facts by those selling used cars concerning warranty coverage and mechanical condition.

Despite the rule's apparent new life, its fate is still very much in doubt. One reason stems from a case pending in the U.S. Court of Appeals for the Second Circuit which was brought by several used car dealers. However, a far more serious reason, in the eyes of most observers, is the fact that the agency (by a 3 to 2 vote) has re-opened the rulemaking. That action is likely to produce one of three results: a delay in implementing the rule; a "modified" rule concerned only with warranty information (as has been proposed by FTC Chairman Miller); or, killing the rule altogether.

## BACKGROUND AND POLICY ANALYSIS

The market for used cars in this country has been substantial for many years and, with the list price for the average new car now exceeding \$10,000 (versus a little less than \$3,800 for the average used car), forecasts call for continued growth. Also for many years, government and private agency complaint files have revealed that many of the millions of used car buyers end up as unhappy consumers because of widespread oral misrepresentations by dealers about warranty coverage and a high incidence of oral misrepresentations by dealers about the mechanical condition of the cars they sell.

Recognition of the prevalence of warranty problems with respect to the sale of used cars prompted the Congress in 1974 to include as part of the Magnuson-Moss Warranty Act a provision directing the Federal Trade Commission to "initiate ... a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles; and, to the extent necessary to supplement the protections offered the consumer" by prescribing "rules dealing with such warranty practices."

On August 14, 1981, more than six years later, the Federal Trade Commission completed development of such a rule. Prior to 1980, the course of this rulemaking would have reached its conclusion. Under a provision included in the FTC Improvements Act of 1980, however, the matter remained unsettled. That Act, until the Supreme Court declared the provision unconstitutional, required that any rule which the Commission promulgated had

to be submitted to the House and Senate Commerce committees for legislative review. The rule could then be killed if both Houses of Congress adopted, within 90 calendar days of continuous session, a concurrent resolution disapproving the rule.

In May 1982, in the first and only application of this provision, Congress disapproved the used car rule. (Earlier this year, the FTC's funeral rule was submitted to the Commerce committees for review. While a concurrent resolution was introduced in the House, none was introduced in the Senate. Time for congressional action expired on May 15. The rule is now slated to become effective on Jan. 1, 1984. For additional information on this subject see IB83040, The FTC's Funeral Rule.) Car dealers and their principal trade associations, the National Automobile Dealers Association (NADA) and the National Independent Automobile Dealers Association (NIADA), voiced their opposition to the rule even though it had been considerably paired back from earlier versions. In fact, as FTC Commissioner Patricia Bailey testified before a House Energy and Commerce subcommittee on Feb. 24, 1982, the final version of the rule is for all intents and purposes the approach supported by NIADA in February 1979 when it appeared that a tougher rule might be approved.

Both NADA and NIADA claimed that the FTC rule will, in effect, require dealers to inspect virtually all vehicles to comply with the rule's mandates. Additionally, according to the trade groups, the rule is ambiguous, will subject dealers to tremendous potential liabilities, and displays "total lack of wisdom from a public policy point of view."

The FTC attempted to address these concerns by issuing a statement of enforcement policy. The statement "reiterate(s), unequivocally, that this rule does not -- in any manner or for any purpose, in theory or in practice -- require that dealers inspect used cars prior to sale," and that "no dealer can ever be subject to an enforcement action by the Commission for not inspecting." The statement also says that "as a matter of policy, the Commission will only enforce the rule when a repeated pattern of abuse can be demonstrated."

For their part, the major consumer organizations were disappointed that, in their opinion, the rule had been so weakened, but believed its adoption was far superior to no rule at all. Furthermore, and in some respects perhaps more importantly, consumer leaders worried about the precedent that could be established if industry supporters were successful in defeating a rule through the political process (the legislative veto) that they were not able to kill during the protracted regulatory process.

### The Used Car Market

On one level, the genesis for the FTC's used car rule can be traced back to the twilight of the horse and buggy era; from the time the first automobile owners decided to sell or trade-in their cars, the used car market -- one very different from the new car market -- was created.

New cars have a definite, specific manufacturer's suggested retail price, albeit one that may be subject to some bargaining depending upon demand and manufacturer/dealer policy. Furthermore, within generally narrow quality control limits of manufacture and assembly, all the major basic systems of a new car can be expected to be mechanically sound. This fact, in turn, permits the seller to warrant the product. Manufacturers have offered

basically the same warranty coverage for decades because new cars can be expected to perform reliably for a certain time period or number of miles.

The used car, in contrast, is a very different product. Prices of the same make, model, and vintage cars vary considerably, depending upon such factors as the type of driving to which the vehicle was subjected, how well the car was maintained, whether the car was ever involved in an accident, and its general appearance. This last factor, appearance, has been shown to be the most important in the purchasing decision. The seemingly more important factor -- the condition of the car's major systems -- is largely unknown by the typical buyer according to the major studies that have been performed.

### Size and Characteristics

The used car market in the United States is sizeable by almost any standard; last year sales exceeded 18 million units for the second year in a row. The revenues generated by the sale of these used cars totaled over \$70 billion, an increase of slightly more than 6% over 1979. And, as new car prices keep escalating and high interest rates continue to prevail, forecasts call for no reduction in the demand for used cars.

There are some 21,000 franchised new car dealers who also sell used cars and some 36,000 independent used car dealers. New car dealers retail about 42% of the total number of used cars, according to a poll released in July 1981, by the Hertz Corporation which conducts a yearly national survey. Inasmuch as these dealers normally sell newer, more expensive cars (\$4,418 average price per car) their revenues were \$34.6 billion, or almost half the total. Used-car only dealers, without a new car franchise, sold about 18% of the total (at a \$3,981 average). The remaining 40% of used car sales are private transactions of which 29% involve sales to strangers (at a \$3,141 average) while 11% are sales between friends or relatives (\$2,828 average). Private sales are excluded from the rule's coverage which only applies to "dealers", defined as those who sell more than 5 cars a year.

### Potential for Error and Abuse

There are some products, services, and items that for a variety of reasons lend themselves to selling abuses. Selling land is a prime example; selling used cars is another. The potential for error and abuse in the selling of used cars is large because, among other reasons, the automobile is a relatively complex, sophisticated product, and consumers are not well educated as to what to look for when they shop for used cars.

### Consumer Complaints

Given the basic truism that a car's components and systems will fail at an increasing rate with use and over time, the fact that few consumers possess substantial mechanical knowledge and most tend to make their purchasing decisions based primarily on appearance, the large purchase price, and the very sizable volume of transactions, it should be no surprise that Better Business Bureaus, state attorneys general, and other similar agencies receive many consumer complaints involving the buying and selling of used cars.

While it is true that upon investigation a substantial number of complaints suggest disappointment, error, poor judgement, etc., in which the

seller is not culpable, the used car industry's abysmal reputation is not inexplicable. State and local law enforcement personnel bolster the view of the FTC staff that the extensive rulemaking record taken as a whole conclusively demonstrates that the number of consumer complaints is excessive due to the prevalence of deceptive practices by franchised and independent dealers. "The clear and unavoidable conclusion established by the record is that many dealers do misrepresent or fail to disclose material facts relating to the dealer's responsibility for making repairs after sale or to the mechanical condition of vehicles offered for sale."

#### FTC Investigation and Rule Development

The used car rule grew out of an investigation begun by the FTC's Seattle Regional Office in 1973. That investigation led to a 1973 report which recommended that the FTC regulate the sale of used cars through a system of required inspections by dealers, disclosure of defects, and mandatory warranties on parts found to be without defects. Subsequently, the FTC Commissioners directed the staff of the Bureau of Consumer Protection in Washington, D.C. to continue the investigation.

In 1975, while the staff investigation was in progress, the Magnuson-Moss--Federal Trade Commission Improvement Act became effective. In title I of the Magnuson-Moss Act, Congress directed the FTC to initiate a rulemaking proceeding dealing with "warranties and warranty practices in connection with the sale of used motor vehicles." This statutory directive expressly authorized the FTC to proceed under both Title I of the Magnuson-Moss Act and any other statutory authority available to the agency.

In a December 1975 report, the Bureau of Consumer Protection's staff recommended that the Commission initiate a rulemaking proceeding. The report described warranty practices, as well as a variety of other practices related to the sale of used cars, which, in the staff's opinion, violated not only Title I of the Magnuson-Moss Act, but also Section 5 of the Federal Trade Commission Act which declares unlawful "unfair or deceptive acts or practices in or affecting commerce."

#### Initial Version of the Rule

After reviewing the staff's initial report, and in compliance with the Congressional directive, the Commission published an Initial Notice of Proposed Rulemaking on January 6, 1976, in the Federal Register. The Initial Notice proposed a Trade Regulation Rule (TRR) designed to remedy the allegedly unlawful practices through (1) a "window sticker" posted on each used car disclosing warranty terms, warranty disclaimers, prior use of the vehicle, mileage, prior repairs, and dealer identification information; and, (2) a specified form of warranty disclaimer to be used in "as is" sales contracts. The disclosure of mechanical defect information and a "pre-purchase inspection opportunity" which would have given consumers the right to take a car to a third party for inspection prior to purchase were also included as suggested remedies for public comment.

Following a number of additional procedures, including the publication of two more Notices, the holding of public hearings in six cities during 1976 and 1977, and a report by the Presiding Officer assigned to the rulemaking, the staff recommended a revised TRR which would have required mandatory inspection and disclosure of defects regarding certain mechanical and safety

components of used cars. The disclosures of warranty coverage, repair cost estimates, prior use, mileage, availability of service contracts, and dealer identification information were also included in the revised rule. These disclosures were to be made on a "window sticker" attached to the side window of the used car.

Responding to the proposal for mandatory inspection and disclosure of defects, the NIADA commented in February 1979 as follows:

It is always difficult and often impossible to determine the exact condition of a used product. Its parts are worn and may have been subjected to abusive treatment by previous owners. Neither buyer nor seller can ever be certain that some latent defect which evades discovery will not surface after resale. Disclosure of significant known defects, however, would assure that consumers, who would possess the same information as the dealer about the car's condition, could bargain for a reasonable price and warranty coverage to reflect the car's known mechanical condition.

NIADA believes that a beneficial balance in consumer and dealer knowledge can be achieved by means of a rule requiring a window sticker which would disclose both significant known defects and defects discovered during any state-required safety inspection. By "significant known defects," we mean all defects which the dealer is personally aware of other than cosmetic or minor defects.

Following a number of other procedural requirements, including the receipt of comments from the public, the staff's summary of post-record comments, memorandum recommending modifications in the proposed rule, and a memorandum from the Director of the Bureau of Consumer Protection outlining an alternative "optional inspection" rule were forwarded to the Commission in July 1979.

The Commission met in October 1979 to consider whether to adopt a final rule, and if so, what form the rule should take. While no final determination resulted from the meeting, the mandatory inspection approach recommended by the staff was rejected by the Commission. The staff was directed to analyze an optional inspection rule.

During the next year and a half the proposed rule was redrafted and modified and additional comments were solicited and received. On April 14, 1981, the Commission met and determined not to adopt the "optional inspection rule," but instead approved in substance the rule in its present form.

On Aug. 14, 1981, the Commission adopted the rule and published it in the Federal Register (pages 41328 through 41378). Then, on Sept. 9, 1981, the agency sent the rule to the Commerce committees in both the House and Senate in accordance with the legislative veto provision of the FTC Improvements Act of 1980. A mere 2 days later, Representative Lee introduced a joint resolution (H.Con.Res. 178) disapproving the rule. Four days after that, Senator Pressler introduced a similar measure (S.Con.Res. 33) in the Senate. Commerce subcommittees held hearings in both Houses of Congress during the

fall and it appeared that the rule's opponents had sufficient votes to kill it. On Dec. 11, 1981, however, as the 1st session of the 97th Congress drew to a close, parliamentary maneuvers sidetracked the concurrent resolutions.

Nevertheless, the used car rule's reprieve was short-lived. Following the FTC's resubmission of the rule to the Commerce committees on Jan. 28, 1982, Representative Lee and Senator Pressler again introduced joint resolutions (H.Con.Res. 256 and S.Con.Res. 60, respectively) of disapproval. Both were passed in May 1982 by wide margins, S.Con.Res. 60 by a 69-27 vote on May 18, and H.Con.Res. 256 by a 286-133 vote on May 26. Thus, it appeared that the used car industry had triumphed and that the years of rulemaking by the FTC had gone for naught.

#### Supreme Court Strikes Down Legislative Veto

With its historic June 23, 1983, decision in INS v. Chadha invalidating the use of a one house legislative veto, the Supreme Court provided supporters of the FTC's used car rule considerable optimism that it would similarly declare the two house legislative veto provision of the FTC Improvement Act of 1980 unconstitutional. This the high court did on July 6, when it affirmed the Oct. 22, 1982 decision in United States Senate v. Federal Trade Commission by U.S. Court of Appeals for the District of Columbia Circuit. The court of appeals had ruled that the veto provision was an unconstitutional infringement of the separation of powers doctrine and violative of constitutional procedures established for the exercise of legislative power. (For additional information on this subject, see: U.S. Library of Congress. Congressional Research Service. Summary and preliminary analysis of the ramifications of INS v. CHADHA, the Legislative Veto Case. Typed Report, by Morton Rosenberg, June 28, 1983.)

#### Divided FTC Re-Opens the Rulemaking, Sets Effective Date

On July 25, 1983, the Commission (by a 3-2 vote) decided to set an effective date in order to preclude the U.S. Court of Appeals for the Second Circuit from doing so. The Commission noted that judicial review pending in that court was terminated because of the legislative veto, subject, however, to reinstatement following any Supreme Court decision invalidating the veto. On July 26, the lawsuit challenging the Used Car Rule (Miller Motor Car Corp., et al. v. FTC, 2d Cir. No. 81-4144) was duly reinstated. Thus, the Commission decided the Rule should become effective 6 months after entry of a judgement by the court of appeals disposing of the reinstated petitions. (Federal Register, Vol. 48, No. 154, Aug. 9, 1983, p. 36096).

More important, however, the Commission voted to re-examine the Used Car Rule "to determine whether modifications are appropriate." The Rule's supporters fear the purpose of the re-examination is to further weaken its consumer protection provisions or repeal it altogether.

Chairman Miller led the move to reconsider the Rule. While maintaining that he supports some type of rule requiring disclosure of warranty information, he has repeatedly stated his opposition to the defect disclosure requirements of the present rule.

A delay in reaching a decision on the rule could prove crucial inasmuch as the Reagan Administration will be naming a new Commissioner to the FTC, probably in September. The new appointee will replace Republican David A.



Clanton, and it is considered likely that he or she will give Chairman Miller a solid majority in future agency votes.

While Clanton did vote for the rule and supported it during the ensuing congressional debate, he voted to re-examine the rule, saying, "I strongly believe....that the Commission should not simply ignore the overwhelming vote of disapproval registered by COngress on this subject last year, even if that action turned out to be constitutionally infirm."

In a separate statement, Commissioner Patricia P. Bailey dissented from the decision to reopen the used car rule proceeding, saying, "There are no new facts or changed circumstances of which I am aware that could form the basis for a reversal of the decision I made two years ago that this rule is the least burdensome, minimally necessary regulation justified by the record of this proceeding." Also dissenting in a separate statement, Commissioner Michael Pertschuk said, "The effect of reopening will certainly delay, if not kill altogether, the version of the Used Car Rule passed by a unanimous Commission in August 1981. The present Commission has taken this action without a mote of evidence that there have been any changed conditions in the used car industry that might make such reconsideration appropriate."

#### Overview of the Rule

The primary purpose of the rule is to prevent and discourage oral misrepresentations and deceptive omissions of material facts by used car dealers concerning warranty coverage and mechanical condition. The rule provides a uniform method for written disclosure of such information by means of a Used Car Buyers Guide ("Buyers Guide"). It requires clear disclosure through the Buyers Guide of the existence of any warranty coverage and of the terms and conditions of any warranty offered in connection with the sale of a used car, including the duration of coverage and the percentage of total repair costs to be paid by the dealer.

The rule also includes certain additional disclosures that are incorporated on the Buyers Guide, including a list of the fourteen major systems of an automobile; a suggestion that consumers ask the dealer if a prepurchase inspection is permitted; and a warning against reliance on spoken promises that are not confirmed in writing.

A Spanish-language version of the Buyers Guide is required if the used car transaction is conducted in Spanish. The rule includes a text for a Spanish-language version.

In addition, the rule provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. A further requirement of the rule is that dealers must give copies of the Buyers Guide reflecting the final terms of the sale to the consumer.

Lastly, the rule requires the dealer to disclose on the -Buyers Guide certain known defects in a used car offered for sale; those defects that must be disclosed, if known by the dealer, are listed in the text of the rule and on the back of the Buyers Guide.

#### Industry Opposition to the Rule

In general, the used car industry has strongly opposed all versions of the FTC's used car rule, including the rule in its present form as adopted and published in the Federal Register on Aug. 14, 1981. The two principal industry trade groups, the National Automobile Dealers Association (NADA) and the National Independent Automobile Dealers Association (NAIDA), have said that while they understood and appreciated the concern of the Congress and others that clearer warranty information was needed and would be willing to work with the FTC in developing an effective approach to warranty disclosures, the rule in its various forms differed substantially from the original intent.

NADA criticisms of the rule include the following:

- \* the rule was based on evidence which to a substantial degree is outdated and is not based on current market conditions
- \* cost estimates for the rule are in some instances based upon state data from which national cost projections cannot be reliably made
- \* the rulemaking is procedurally flawed
- \* important parts of the rule are confusing because key definitions are subjective and ambiguous
- \* the practical effect of the rule is to require dealers to inspect cars, contrary to Congressional intent and the rule's preamble in which the FTC states that "dealers are under no obligation to inspect vehicles to discover defects"
- \* parts of the FTC's Regulatory Analysis are "fundamentally invalid."

Because the rulemaking process stretched over a number of years, it is certainly true that many of the studies and other information that support the rule date back to the early and mid-seventies. On the other hand, the problems that the rule attempts to address have been widely recognized for several decades, thus while much of the information may not be particularly "fresh," there is no indication that it is outdated.

NADA's complaint concerning the FTC's projecting state data on a national basis recieved support from the U.S. Regulatory Council. In an assessment published in March 1981, one of the conclusions reached by the Council was that "[i]n several cases, the extension of state data or historical data to the proposed National rule does not provide a clear idea of the costs." The Council's assessment dealt with an earlier version of the rule. The FTC staff report itself admits to the uncertainties of projecting state experience on a national basis.

Dealers, consumers, and other interested parties were precluded from submitting any comments on the substance and impact of the rule subsequent to September 25, 1979, according to NADA. It was also critical of the rulemaking process in which the Presiding Officer is an employee of the Commission's Bureau of Consumer Protection and the "rulemaking staff's unfettered access to the Commission" during the proceeding.

Because of the "ambiguity and complexity of the 'known defect' provisions, dealers will simply not understand their responsibilities under the rule," says NADA. In particular they have complained about subjective terms such as "improper" and "abnormal" that are included in the Buyers Guide sticker's 52 listed defects. According to NADA, studies have shown a wide range of opinion among service technicians on the issue of what is a "defect," and the "Commission's use of subjective terms will only serve to further complicate the issue."

The net effect of the complexity and ambiguity of the "known defects" provision, says NADA, will be that conscientious dealers will have to bear the cost of inspecting used cars in order to minimize legal liability for a rule violation. Thus, the NADA's position is that despite the fact that the used car rule specifically states that dealers are not required to conduct inspections of the cars they sell, and are only required to disclose certain material defects if known at the time of sale, the practical application of the rule is to indirectly require dealers to conduct inspections. The FTC specifically denies this.

#### Impact of the Rule on the Used Car Market

The probable impacts on the supply and demand factors of the used car market resulting from implementation of the various aspects of the FTC's used car rule are not certain and subject to debate.

The FTC had built a strong case that consumers suffer substantial economic harm as a result of unfair and deceptive acts and practices by a significant percentage of franchised and independent dealers or their salespersons in connection with the sales of used cars. While the probable economic impacts cannot be known with any great degree of certainty, if the rule is effective and achieves all or most of results intended by its drafters several outcomes appear likely to occur. These include but are not limited to, the following:

(1) the range of prices for cars of the same make, model, and vintage will increase as a result of consumers possessing more accurate information about the true condition of cars. In other words, those used cars that are relatively free of defects are likely to command higher prices than they would in the absence of the FTC rule and those cars that are in relatively poor condition will likely be sold for less.

(2) To the extent that the rule causes dealers to repair defects prior to sale, and pass those costs on to the consumer, the average purchase price will increase. Nevertheless, the consumer's true cost of ownership, i.e., purchase price plus repair costs for defects, may decline. Example: BEFORE THE RULE, Mr. Consumer buys a used car from a Dealer for \$3,000. The car has a defect that neither knows about. Two weeks later, Mr. Consumer must pay \$500 to have the defect repaired. The total cost to Mr. Consumer is \$3,500. AFTER THE RULE, the Dealer decides that it is to his advantage to more closely inspect the car before offering it for sale. He discovers the defect and repairs it at a cost of \$300 (The example assumes that the cost to the Dealer to repair the defect is \$200 less than it would cost Mr. Consumer to have the same defect repaired). For the purpose of this example, it is further assumed that the Dealer is able to pass along to Mr. Consumer the entire \$300 cost of repair and, that Mr. Consumer is willing to pay a purchase price of \$3,300 for the car which now has no defect. Total cost to consumer is \$3,300. Thus, the Rule saves Mr. Consumer \$200. The example, however, raises at least two questions. Would the Dealer really have been

able to pass along all the costs? And, would Mr. Consumer have been willing to pay the extra \$300 for the car?

(3) The marketing incentive of dealers may shift from cosmetic pre-sale reconditioning to remedying mechanical condition factors because consumers will become more knowledgeable about what questions to ask dealers and what to look for.

(4) There likely will be some reduction in consumer reliance on oral promises resulting from the "as is" disclosure statement on the Buyers Guide. Also, the required disclosure of "known defects" should have a similar effect.

(5) Competitive pressures resulting from the disclosure of warranty information may cause an increase in the number of cars sold with warranties and may increase the average warranty coverage provided. The increases in both the number of used cars sold with warranties and the coverage afforded can be expected to result in higher used car prices. The FTC acknowledges this possibility, adding that "[p]resumably, dealers will not offer warranties with more protection than that for which consumers are willing to pay. Thus, to the extent warranty coverage and therefore post-sale costs do increase, such costs will be imposed by consumer demand in the market, not by the Rule."

#### Consumer Education and Information

Although not billed as such, the FTC's used car rule is perhaps the most intriguing consumer education and information issue to come before the Congress in years. The rule attempts through disclosures to narrow the substantial information gap that currently exists between sellers and buyers of used cars with regard to evaluating a car's worth.

The rulemaking record established that most used car buyers do not understand the meaning and implications of the term "as is." The rule's Buyers Guide sticker is designed to educate the consumer by explaining that if the car is sold "as is," the dealer will not assume responsibility for repairing it no matter what goes wrong. The record establishes that prospective buyers do not know what to look for when attempting to evaluate a used car, with the consequence that their decisions are based primarily on appearance. The rule's sticker is designed to educate them as to what are the major systems of a car, what they should look for, and what they should ask the dealer about. In other words, the general thrust of the rule is to educate the consumer at the point of sale. By providing information only to those who need it, as opposed to running educational public service announcements on television, for example, this approach would seem to be the least costly (though not necessarily the most effective).

Despite the used car rulemaking having reached fruition at a time when the Reagan Administration and a sizeable portion of the Congress have voiced the opinion that consumer education is the best way for the Federal-Government to help protect consumers, the rule never received support on this basis. That the sticker is intended to educate consumers is, of course, no guarantee that it will accomplish that goal. The purchasers of automobiles, both new and used, are known to be emotionally influenced and frequently lacking in rationality. In American (and, indeed, in all parts of the world), the selection of a car may be viewed as an extension of self. Under such circumstances, consumers may not be very receptive to educational efforts;

the appearance of a car may well continue to be the key factor in the purchasing decision.

### Campaign Contributions

A study conducted by Public Citizen, a public interest research group, revealed the following findings:

- o Senators and Representatives who co-sponsored the Concurrent Resolutions to veto the used car rule received in excess of \$500,000 in campaign contributions from car dealers in the 30-month period ending June, 1981.
- o Of the 206 co-sponsors in the House, 175, or 85%, had received a total of \$476,826 from the National Automobile Dealers Association.
- o Congressmen who received money from NADA were three times as likely to co-sponsor the veto resolution as those who received no political contributions from NADA.
- o Nine of the thirteen Representatives receiving at least \$7,500 from NADA were co-sponsors, as were five of the six Senators who received \$9,700 or more.

The study was compiled from Federal Election Commission (FEC) computer printouts containing data filed directly with the FEC by the NADA political action committee.

### LEGISLATION

S.Con.Res. 33 (Pressler)

Resolved by the Senate (the House of Representatives concurring), That the Congress disapproves the final rule promulgated by the Federal Trade Commission dealing with the matter of the trade regulation rule relating to the sale of used motor vehicles, which final rule was submitted to the Congress on September 10, 1981.

H.Con.Res. 178 (Lee)

Resolved by the House of Representatives (the Senate concurring), That the Congress disapproves the final rule promulgated by the Federal Trade Commission dealing with the matter of the trade regulation rule relating to the sale of used motor vehicles, which final rule was submitted to the Congress on September 10, 1981.

S.Con.Res. 60 (Pressler)

Identical to S.Con.Res. 33. Submitted to Congress on Jan. 28, 1982.

H.Con.Res. 254 (J. Collins)

Identical to H.Con.Res. 178. Submitted to Congress on Jan. 28, 1982.

H.Con.Res. 256 (Lee)

Identical to H.Con.Res. 178. Submitted to Congress on Jan. 28, 1982.

### HEARINGS

U.S. Congress. House. Committee on Energy and Commerce. Subcommittee on Commerce, Transportation, and Tourism. Federal Trade Commission's rule regulating the sale of used motor vehicles. Hearings on H.Con.Res. 178, H.Con.Res. 254, H.Con.Res. 256. 97th Congress, Dec. 2, 1981, and Feb. 24, 1982. Washington, U.S. Govt. Print. Off., 1982. 309 p. Serial No. 97-110.

U.S. Congress. House. Committee on Post Office and Civil Service. Subcommittee on Investigations. Administrative law judge program of the Federal Trade Commission. Hearings. 96th Congress, 2nd session. June 17, 1980. Washington, U.S. Govt. Print. Off., 1980. 66p.

U.S. Congress. Senate. Committee on Commerce, Science, and Transportation. Subcommittee for Consumers. Federal Trade Commission used car rule. Hearings on S.Con.Res. 33. 97th Congress, 1st session, Oct. 30, 1981. Washington, U.S. Govt. Print. Off., 1981. 132 p. Serial No. 97-86.

----- Oversight of the Federal Trade Commission. Hearings, 96th Congress, 1st session, September 18, 19, 27, 28; October 4, 5, and 10, 1979. Washington, U.S. Govt. Print. Off., 1979. 808 p.

### REPORTS AND CONGRESSIONAL DOCUMENTS

U.S. Congress. House. Committee on Interstate and Foreign Commerce. Federal Trade Commission Improvements Act of 1979. Report together with dissenting and additional views to accompany H.R. 2313. Washington, U.S. Govt. Print. Off., 1979. 47 p. (96th Congress, 1st session. House. Report no. 96-181.)

U.S. Congress. House. Committee on Rules. Subcommittee on Rules of the House. Studies on the Legislative Veto. Prepared by the Congressional Research Service. Committee Print. 96th Congress, 2nd session. Washington, U.S. Govt. Print. Off., 1980. 802 p.

### CHRONOLOGY OF EVENTS

08/09/83 -- FTC published notice in Federal Register (Vol. 48 No. 154, pages 36096-7) concerning its determination to re-examine the rule.

07/25/83 -- FTC decided by a 3-2 margin to reconsider the rule.

07/06/83 -- Supreme Court affirmed decision by U.S. Court of Appeals that

Improvements the legislative veto provision contained in the FTC Act of 1980 is unconstitutional.

- 06/23/83 -- Supreme Court declared one-House legislation veto unconstitutional in INS v. CHADHA.
- 10/22/82 -- U.S. Court of Appeals for the District of Columbia Circuit declared the legislative veto unconstitutional.
- 06/02/82 -- Consumers Union and Public Citizen filed suit in Federal court challenging the constitutionality of Congress' veto of the FTC's used car rule.
- 05/26/82 -- The House passed S.Con.Res. 60 by a vote of 286-133, thereby vetoing the FTC's used car rule.
- 05/18/82 -- The Senate passed S.Con.Res. 60 disapproving the FTC's used car rule by a vote of 69-27.
- 05/11/82 -- By a 26-15 vote, the House Commerce Committee approved H.Con.Res. 256 and sent it to the House Floor for a vote.
- 04/21/82 -- Subcommittee on Commerce, Transportation and Tourism held markup session and forwarded H.Con.Res. 256 to Full Committee.
- 03/29/82 -- By a 12-5 vote the Senate Committee on Commerce, Science and Transportation ordered S.Con.Res. 60 to be reported without amendment favorably.
- 02/24/82 -- Hearings held on H.C.Res. 254 and H.C.Res. 256 by the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce.
- 01/28/82 -- FTC resubmitted its trade regulation rule relating to the sale of used motor vehicles to the House and Senate Commerce committees. Also, House and Senate Concurrent Resolutions disapproving the FTC rule were introduced.
- 12/11/81 -- Parliamentary maneuver sidetracked the resolutions disapproving the FTC used car rule, thus requiring the process to be repeated during the 2nd session of the 97th Congress.
- 12/02/81 -- Hearings held on H.C.Res. 178 by the Subcommittee on Commerce, Transportation and Tourism of the House Committee on Energy and Commerce.
- 10/30/81 -- Hearings held on S.Con.Res. 33 by the Subcommittee for Consumers of the Senate Committee on Commerce, Science, and Transportation.
- 09/15/81 -- S. Con.Res. 33 disapproving FTC rule relating to the sale of used motor vehicles introduced and referred to the Committee on Commerce, Science, and Transportation.

- 09/11/81 -- H. Con.Res. 178 disapproving FTC rule relating to the sale of used motor vehicles introduced and referred to the Committee Energy and Commerce.
- 09/09/81 -- FTC, in accordance with congressional veto provision of the FTC Improvements Act of 1980, sends its trade regulation rule relating to the sale of used motor vehicles to the House and Senate commerce committees.
- 08/19/81 -- National Automobile Dealers Association (NADA) files suit against the FTC in an effort to overturn the agency's used car rule. Actions filed in the U.S. Second Circuit Court of Appeals and U.S. District Court for the District of Columbia.
- 08/19/81 -- NADA protests FTC used car rule to Vice President George Bush, head of a presidential task force on regulatory reform.
- 08/14/81 -- FTC trade regulation rule relating to the sale of used motor vehicles is adopted and published in the Federal Register.
- 04/14/81 -- FTC rejects staff proposal on used car rule that would have encouraged dealers to inspect for a car's condition and votes instead for a rule that emphasizes disclosure of warranty information.
- 08/07/80 -- FTC proposed trade regulation rule relating to the sale of used motor vehicles in published in Federal Register.
- 05/21/80 -- Senate accepts conference report accepted by the House the previous day on authorizing legislation for the FTC that includes a two-chamber legislative veto of regulations.
- 05/16/80 -- FTC tentatively adopts proposed trade regulation rule concerning the Sale of Used Motor Vehicles.
- 11/17/78 -- FTC staff report proposes rule requiring used car dealers to perform pre-sale inspections of cars and the displaying of a form disclosing the condition of major mechanical and safety systems. Proposed rule also requires dealer to disclose warranty information.
- 01/06/76 -- FTC publishes proposed trade rule in Federal Register designed to deal with the considerable deception the commission said it found in used car sales. -
- 01/05/75 -- Magnuson-Moss Warranty - Federal Trade Commission Improvements Act signed into law. Title I includes provision directing the FTC to "initiate" a rulemaking proceeding dealing with used car warranties and warranty practices, including the method of disclaiming warranties.



1973 -- Investigation by FTC Seattle Regional Office recommends that the Commission regulate used motor vehicle dealers through a system of required dealer inspections, warranties, and disclosures.

#### ADDITIONAL REFERENCE SOURCES

- Brown, Merrill. FTC passes weaker rules on used cars. The Washington Post, Aug. 17, 1981: p. D8-9.
- Epstein, Ralph C. The automobile industry: its economic and commercial development. New York, Arno press, 1972. 412 p.
- FTC backs away from staff's draft on used car sales. The Wall Street Journal, Oct. 12, 1979: p. 6.
- FTC Regulation on sales of used cars to face tough congressional review. The Wall Street Journal, Aug. 17, 1981: p. 3.
- FTC seeks to make used-vehicle dealers give helpful information to customers.. The Wall Street Journal, Jan. 5, 1976: p. 5.
- FTC decides to reconsider planned rule for used-car dealers to disclose defects. The Wall Street Journal, July 26, 1983: p. 4.
- Gelhorn, Ernest. The wages of zealotry: the FTC under siege. Regulation, Jan.-Feb. 1980: 33-40.
- Holt, Brad. Rules wouldn't work: FTC's proposed stickers on used cars. The Washington Star, Jan. 4, 1976: p. C1-2.
- Lanouette, William J. The FTC, with a finger to the wind, shortens its regulatory reach. National Journal, v. 13, July 4, 1981: 1206-1210.
- Mateja, James. One thing is certain; FTC used car regulations will raise prices. The Chicago Tribune, Nov. 13, 1978: Sec. 6, p. 10.
- Sticker listing defects proposed for used cars. The Chicago Tribune, Nov. 14, 1978: Sec. 1, p. 2.
- Proposal to regulate used car dealers' selling practices is softened by the FTC. The Wall Street Journal, Apr. 15, 1981: p. 22.
- Sarasohn, Judy. FTC's car rule falls victim to first congressional veto. Congressional quarterly, May 29, 1982: 1259.
- Theiler, Patricia. Wheelers and dealers. Common cause, October 1981: 15-21.
- Warner, Margaret Garrard. Used-car rule of FTC stopped in House, 286-133. Wall Street Journal, May 27, 1982: 10.

West, William F. Judicial rulemaking procedures in the FTC: a case study of their causes and effects. Public policy, v. 29, spring 1981: 197-217..

Yarbrough, Charles. Tough disclosure rules are proposed on used-car dealers. The Washington Star, Nov. 13, 1978: p. D-8.