

Official Commentary to 137-020-0040

OFFICIAL COMMENTARY: Many advertisements for sales and leases of motor vehicles use one or more of the terms that trigger application of Regulation Z or Regulation M disclosure requirements (“triggering terms”) and then fail to make the required disclosures. This rule makes clear that such failure violates the Oregon Unlawful Trade Practices Act. Each of these three acts is discussed below:

1. “Regulation Z” - The Truth-in-Lending Act and accompanying regulations govern credit advertising. An advertisement for closed-end credit which contains a "triggering term," must disclose other major terms, including the annual percentage rate. This rule is intended to ensure that all important terms of a credit plan, not just the most attractive ones, appear in an ad.

a. The following triggering terms require certain disclosures to be made in the advertisement for closed-end credit (12 CFR 226.24):

(1) The amount of the down payment (expressed as either a percentage or dollar amount) in a "credit sale" transaction;

Examples:

"10% down"

"\$1000 down"

"90% financing"

"trade-in with \$1000 appraised value required"

(2) The amount of any payment (expressed as either a percentage or dollar amount);

Examples:

"Monthly payments less than \$250 on all our loan plans"

"Pay \$23.44 per \$1000 amount borrowed"

"\$210.95 per month"

(3) The number of payments or the period of repayment; or

Examples:

"Up to four years to pay"

"48 months to pay"

"30-year mortgages available"

(4) The amount of any finance charge.

Examples:

"Financing costs less than \$300 per year"

"Less than \$1200 interest"

"\$2.00 monthly carrying charge"

b. If any one of the triggering terms appears, it would be an unfair or deceptive trade practice to fail to clearly and conspicuously disclose in the advertisement:

- (1) The amount or percentage of the down-payment;**
- (2) The terms of repayment; and**
- (3) The "annual percentage rate," using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact also must be stated.**

The amount or percentage of the "down payment" need not be shown directly, as long as it can be determined from the ad. For example, "10% cash required from buyer" or "credit terms require minimum \$1000 trade-in" would satisfy the disclosure requirement.

The "terms of repayment" may be expressed in a variety of ways, as long as they convey the required information. For example, an automobile finance company might use unit cost to disclose repayment terms: "48 monthly payments of \$23.44 for each \$1000 borrowed." Similarly, the length of the loan can be expressed as the number of payments or the time period of the loan.

2. "Regulation M" - If an advertisement promoting a "consumer lease" contains any of the following triggering terms, then five specific disclosures must also be clearly and conspicuously included in the advertisement. It would be an unfair or deceptive trade practice to fail to clearly and conspicuously make all five disclosures.

a. The triggering terms are:

(1) A statement of any capitalized cost reduction or other payment required before or at lease consummation, or by delivery if delivery takes place after consummation, or that no payment is required; or

(2) The amount of any payment.

b. If any triggering term is used in a consumer lease advertisement then all five of the following disclosures must be in the advertisement:

(1) A statement that the transaction advertised is a lease;

(2) The total amount of any payment (such as security deposit or capitalized cost reduction) required before or at the consummation of the lease, or by delivery if delivery takes place after consummation, or a statement that no such payment is required;

(3) The number, amounts and due dates or periods of scheduled payments under the lease;

(4) Whether or not a security deposit is required; and

(5) In leases where the consumer's liability is based on the difference between the property's residual value and its realized value at the end of the lease term, that an extra charge may be imposed at the end of the lease term.

3. "FTC Used Car Rule" - Motor vehicle dealers must post a Buyers Guide, also known as an "As-Is" disclosure, in every used vehicle which they have displayed for sale or lease as required under the FTC guidelines. If a used car transaction is conducted in Spanish, the seller must post a Spanish language Buyers Guide on the vehicle before it is displayed or offered it for sale.

Dealers must post a Buyers Guide before they "offer" a used vehicle for sale. A vehicle is offered for sale when it is displayed for sale or a dealer lets a customer inspect it for the purpose of buying it, even if the car is not fully prepared for delivery. This requirement also applies to used vehicles for sale on a dealer's lot through consignment, power of attorney, or other agreement. At public auctions, dealers and the auction company must comply. The Rule does not apply at auctions that are closed to consumers.

Previously titled or not, any used vehicle that meets the following specifications must post a Buyers Guide (*See*, OAR 137-020-0020 for the Oregon definition of a used vehicle. Under the FTC rule, any vehicle driven for purposes other than moving or test driving, is considered a used vehicle.):

- A gross vehicle weight rating (GVWR) of less than 8,500 pounds;
- A curb weight of less than 6,000 pounds; and
- A frontal area of less than 46 square feet.

Exceptions to the Rule are:

- Motorcycles;
- Any vehicle sold for scrap or parts if the dealer submits title documents to the appropriate state authority and obtains a salvage certification; and
- Agricultural equipment.

Go to <http://www.ftc.gov/bcp/online/pubs/buspubs/usedcarc.htm> for the FTC "Dealer's Guide to the Used Car Rule" and to

<http://www.ftc.gov/bcp/online/pubs/autos/usedcar.htm> for the FTC consumer guide to “Buying a Used Car.”

(Publications: The publications referred to or incorporated by reference in this rule are available from the respective federal agencies or on their internet websites. For further information on advertising consumer credit or consumer leases see the Federal Trade Commission website titled: “How to Advertise Consumer Credit & Lease Terms” at <http://www.ftc.gov/bcp/online/pubs/buspubs/creditad.htm>.)

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