

Auto Industry Division

STUDY GUIDE

**Federal Statutes & Regulations
2017-2018**



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16 CFR Part 455 – Used Motor Vehicle Trade Regulation Rule

455.1 General duties of a used vehicle dealer: definitions.

- (a) It is a deceptive act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as commerce is defined in the Federal Trade Commission Act:
- (1) To misrepresent the mechanical condition of a used vehicle;
 - (2) To misrepresent the terms of any warranty offered in connection with the sale of a used vehicle; and
 - (3) To represent that a used vehicle is sold with a warranty when the vehicle is sold without any warranty.
- (b) It is an unfair act or practice for any used vehicle dealer, when that dealer sells or offers for sale a used vehicle in or affecting commerce as commerce is defined in the Federal Trade Commission Act:
- (1) To fail to disclose, prior to sale, that a used vehicle is sold without any warranty; and
 - (2) To fail to make available, prior to sale, the terms of any written warranty offered in connection with the sale of a used vehicle.
- (c) The Commission has adopted this Rule in order to prevent the unfair and deceptive acts or practices defined in paragraphs (a) and (b). It is a violation of this Rule for any used vehicle dealer to fail to comply with the requirements set forth in §§ 455.2 through 455.5 of this part. If a used vehicle dealer complies with the requirements of §§ 455.2 through 455.5 of this part, the dealer does not violate this Rule.
- (d) The following definitions shall apply for purposes of this part:
- (1) Vehicle means any motorized vehicle, other than a motorcycle, with a gross vehicle weight rating (GVWR) of less than 8500 lbs., a curb weight of less than 6,000 lbs., and a frontal area of less than 46 sq. ft.
 - (2) Used vehicle means any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer, but does not include any vehicle sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).
 - (3) Dealer means any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months, but does not include a bank or financial institution, a business selling a used vehicle to an employee of that business, or a lessor selling a leased vehicle by or to that vehicle's lessee or to an employee of the lessee.
 - (4) Consumer means any person who is not a used vehicle dealer.

- (5) Warranty means any undertaking in writing, in connection with the sale by a dealer of a used vehicle, to refund, repair, replace, maintain or take other action with respect to such used vehicle and provided at no extra charge beyond the price of the used vehicle.
- (6) Implied warranty means an implied warranty arising under State law (as modified by the Magnuson-Moss Act) in connection with the sale by a dealer of a used vehicle.
- (7) Service contract means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, unless offering such contract is “the business of insurance” and such business is regulated by State law.
- (8) You means any dealer, or any agent or employee of a dealer, except where the term appears on the window form required by § 455.2(a).

455.2 Consumer sales—window form.

(a) **General duty.** Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle the applicable “Buyers Guide” illustrated by Figures 1-2 at the end of this part. Dealers may use remaining stocks of the version of the Buyers Guide in effect prior to the effective date of this Rule for up to one year after that effective date (i.e., until January 27, 2018). Dealers who opt to use their existing stock and choose to disclose the applicability of a non-dealer warranty, must add the following as applicable below the “Full/Limited Warranty” disclosure: “Manufacturer’s Warranty still applies. The manufacturer’s original warranty has not expired on the vehicle;” “Manufacturer’s Used Vehicle Warranty Applies;” or “Other Used Vehicle Warranty Applies,” followed by the statement, “Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.”

(1) The Buyers Guide shall be displayed prominently and conspicuously in any location on a vehicle and in such a fashion that both sides are readily readable. You may remove the form temporarily from the vehicle during any test drive, but you must return it as soon as the test drive is over.

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7 1/4 inches wide in the type styles, sizes and format indicated. When filling out the form, follow the directions in paragraphs (b) through (f) of this section and § 455.4.

(b) **Warranties -**

(1) **No Implied Warranty - “As Is”/No Dealer Warranty.**

(i) If you offer the vehicle without any implied warranty, i.e., “as is,” mark the box appearing in Figure 1. If you offer the vehicle with implied warranties only, substitute the IMPLIED WARRANTIES ONLY disclosure specified in paragraph (b)(1)(ii) of this section, and mark the IMPLIED WARRANTIES ONLY box illustrated by Figure 2. If you first offer the vehicle “as is” or with implied

warranties only but then sell it with a warranty, cross out the “As Is - No Dealer Warranty” or “Implied Warranties Only” disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

- (ii) If your State law limits or prohibits “as is” sales of vehicles, that State law overrides this part and this rule does not give you the right to sell “as is.” In such States, the heading “As Is - No Dealer Warranty” and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted as illustrated in the Buyers Guide in Figure 2. If you sell vehicles in States that permit “as is” sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of “As Is - No Dealer Warranty” as illustrated by the Buyers Guide in Figure 2. See § 455.5 for the Spanish version of this disclosure.

IMPLIED WARRANTIES ONLY

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

- (2) **Full/Limited Warranty.** If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:
 - (i) Whether the warranty offered is “Full” or “Limited.” Mark the box next to the appropriate designation. A “Full” warranty is defined by the Federal Minimum Standards for Warranty set forth in section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304 (1975). The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate “Full” or “Limited” for such vehicles, cross out both designations, leaving only “Warranty.”
 - (ii) Which of the specific systems are covered (for example, “engine, transmission, differential”). You cannot use shorthand, such as “drive train” or “power train” for covered systems.
 - (iii) The duration (for example, “30 days or 1,000 miles, whichever occurs first”).
 - (iv) The percentage of the repair cost paid by you (for example, “The dealer will pay 100% of the labor and 100% of the parts.”)
 - (v) You may, but are not required to, disclose that a warranty from a source other than the dealer applies to the vehicle. If you choose to disclose the applicability of a non-dealer warranty, mark the applicable box or boxes beneath “NON-DEALER WARRANTIES FOR THIS VEHICLE” to indicate: “MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle,” “MANUFACTURER'S USED VEHICLE WARRANTY APPLIES,” and/or “OTHER USED VEHICLE WARRANTY APPLIES.”

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it

without one, cross out the offered warranty and mark either the “As Is - No Dealer Warranty” box or the “Implied Warranties Only” box, as appropriate.

- (2) Service contracts. If you make a service contract available on the vehicle, you must add the following heading and paragraph below the Non-Dealer Warranties Section and mark the box labeled “Service Contract,” unless offering such service contract is “the business of insurance” and such business is regulated by State law. See § 455.5 for the Spanish version of this disclosure.

SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

- (c) **Name and Address.** Put the name and address of your dealership in the space provided. If you do not have a dealership, use the name and address of your place of business (for example, your service station) or your own name and home address.
- (d) **Make, Model, Model Year, VIN.** Put the vehicle's make (for example, “Chevrolet”), model (for example, “Corvette”), model year, and Vehicle Identification Number (VIN) in the spaces provided. You may write the dealer stock number in the space provided or you may leave this space blank.
- (e) **Complaints.** In the space provided, put the name and telephone number of the person who should be contacted if any complaints arise after sale.
- (f) **Optional Signature Line.** In the space provided for the name of the individual to be contacted in the event of complaints after sale, you may include a signature line for a buyer's signature. If you opt to include a signature line, you must include a disclosure in immediate proximity to the signature line stating: “I hereby acknowledge receipt of the Buyers Guide at the closing of this sale.” You may pre-print this language on the form if you choose.

455.3 Window form.

- (a) **Form given to buyer.** Give the buyer of a used vehicle sold by you the window form displayed under § 455.2 containing all of the disclosures required by the Rule and reflecting the warranty coverage agreed upon. If you prefer, you may give the buyer a copy of the original, so long as that copy accurately reflects all of the disclosures required by the Rule and the warranty coverage agreed upon.
- (b) **Incorporated into contract.** The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

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.

455.4 Contrary statements.

You may not make any statements, oral or written, or take other actions which alter or contradict the disclosures required by §§ 455.2 and 455.3. You may negotiate over warranty coverage, as provided in § 455.2(b) of this part, as long as the final warranty terms are identified in the contract of sale and summarized on the copy of the window form you give to the buyer.

455.5 Spanish language sales.

- (a) If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the translation and layout for Spanish language sales in Figures 4, 5, and 6.
- (b) Use the following language for the “Implied Warranties Only” disclosure when required by § 455.2(b)(1) as illustrated by Figure 5:

SOLO GARANTÍAS IMPLÍCITAS

El concesionario no hace ninguna promesa de reparar lo que sea necesario cuando compre el vehículo o posteriormente. Sin embargo, las *garantías implícitas* según las leyes estatales podrían darle algunos derechos para hacer que el concesionario se encargue de ciertos problemas que no fueran evidentes cuando compró el vehículo.

- (c) Use the following language for the “Service Contract” disclosure required by § 455.2(b)(3) as illustrated by Figures 4 and 5:

CONTRATO DE MANTENIMIENTO. Con un cargo adicional, puede obtener un contrato de mantenimiento para este vehículo. Pregunte acerca de los detalles de la cobertura, los deducibles, el precio y las exclusiones. Si compra un contrato de mantenimiento dentro de los 90 días desde el momento en que compró el vehículo, las *garantías implícitas* según las leyes de su estado podrían darle derechos adicionales.

- (d) Use the following language if you choose to use the Optional Signature Line provided by § 455.2(f):

Por este medio confirmo que he recibido copia de la Guía del Comprador al momento de la compraventa.

455.6 State exemptions.

- (a) If, upon application to the Commission by an appropriate State agency, the Commission determines, that -
 - (1) There is a State requirement in effect which applies to any transaction to which this rule applies; and
 - (2) That State requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this Rule; then the Commission's Rule will not be in effect in that State to the extent specified by the Commission in its

determination, for as long as the State administers and enforces effectively the State requirement.

- (b) Applications for exemption under subsection (a) should be directed to the Secretary of the Commission. When appropriate, proceedings will be commenced in order to make a determination described in paragraph (a) of this section, and will be conducted in accordance with subpart C of part 1 of the Commission's Rules of Practice.

455.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

Excerpts from IRS Form 8300 Reference Guide

<https://www.irs.gov/businesses/small-businesses-self-employed/irs-form-8300-reference-guide>

Type of Payments to Report

Trades and businesses must report cash payments received if all of the following criteria are met:

- 1) The amount of cash is more than \$10,000
- 2) The business receives the cash as:
 - One lump sum of more than \$10,000, or
 - Installment payments that cause the total cash received within one year of the initial payment to total more than \$10,000, or
 - Previously unreported payments that cause the total cash received within a 12-month period to total more than \$10,000
- 1) The establishment receives the cash in the ordinary course of a trade or business
- 2) The same agent or buyer provides the cash
- 3) The business receives the cash in a single transaction or in related transactions

Example: Dave bought a new car and sold his old one for \$11,000. The buyer paid Dave in cash. Since Dave is not in the trade or business of selling cars, he would not be required to report the receipt of cash exceeding \$10,000 from the sale of the car.

Example: Jane operates a jewelry store in Puerto Rico and received payment in cash on a sale of jewelry for \$12,000. She will need to report the transaction on a Form 8300. In general, a person engaged in a trade or business located in a U.S. possession or territory is subject to the general jurisdiction of the IRS and must file Form 8300 with IRS. This is in addition to any filing obligation the person may have with the territory tax authorities under requirements that are similar to the requirement to file Forms 8300 with the IRS.

Example: Twilight Cemetery Co. provides burial sites and burial services to its customers. As part of its business, Twilight acts as an agent for XYZ Insurance. Tom, a customer of Twilight, purchases a burial insurance policy by making a cash payment of more than \$10,000 to Twilight who immediately delivers the cash to XYZ. The receipt of cash by the agent Twilight is a transaction that must be reported on Form 8300. In completing Form 8300, Twilight must provide the principal's information in Part II.

Cash Includes

Cash includes the coins and currency of the United States and a foreign country. Cash may also include cashier's checks, bank drafts, traveler's checks, and money orders with a face value of \$10,000 or less, if the business receives the instrument in:

- A designated reporting transaction (as defined below), or
- Any transaction in which the business knows the customer is trying to avoid reporting of the transaction on Form 8300.

Example: Tom Greenwood purchases a used car from XYZ Auto Dealership for a total of \$12,000. He pays with a cashier's check having a face value of \$12,000. The cashier's check is not treated as cash because its face value is more than \$10,000. The business does not need to file Form 8300.

A designated reporting transaction is the retail sale of any of the following:

- A consumer durable such as an automobile, boat, or property other than land or buildings that:
 - Is suitable for personal use
 - Can reasonably be expected to last at least one year under ordinary use
 - Has sales price of more than \$10,000
 - Can be seen or touched (tangible property)
- A collectible such as a work of art, rug, antique, metal, gem, stamp or coin.
- Travel or entertainment, if the total sales price of all items sold for the same trip or entertainment event in one transaction or related transactions is more than \$10,000. The total sales price of all items sold for a trip or entertainment event, which includes the sales price of items such as airfare, hotel rooms and admission tickets.

Example: Ed Johnson asks a travel agent to charter a passenger airplane to take a group to a sports event in another city. He also asks the travel agent to book hotel rooms and admission tickets for the group. He pays with two money orders, each for \$6,000. The travel agent has received more than \$10,000 cash in the designated reporting transaction and must file Form 8300.

Cash Does Not Include

Cash does not include:

- Personal checks drawn on the account of the writer.
- A cashier's check, bank draft, traveler's check or money order with a face value of more than \$10,000.

When a customer uses currency of more than \$10,000 to purchase a monetary instrument, the financial institution issuing the cashier's check, bank draft, traveler's check or money order is required to report the transaction by filing the FinCEN Currency Transaction Report (CTR).

Example: Jim Roberts purchases an automobile from ABC Auto Dealers for \$19,000. He pays with \$4,000 in currency and wires \$15,000 from his bank account to the dealership's bank account. A wire transfer does not constitute cash for Form 8300 reporting purposes, since the remaining cash remitted to ABC Auto Dealers was below \$10,000 the dealer has no filing requirement.

- A cashier's check, bank draft, traveler's check or money order that is received in payment on a promissory note or an installment sales contract (including a lease that is considered a sale for federal tax purposes). However, this exception applies only if:
 - The business uses similar notes or contracts in other sales to ultimate customers in the ordinary course of its trade or business and
 - The total payments for the sale that the business receives on or before the 60th day after the sale are 50 percent or less of the purchase price.
- A cashier's check, bank draft, traveler's check, or money order that is received in payment for a consumer durable or collectible, and all three of the following statements are true:
 - The business receives it under a payment plan requiring:
 - One or more down payments and
 - Payment of the rest of the purchase price by the date of sale.
 - The business receives it more than 60 days before the date of the sale.
 - The business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.
- A cashier's check, bank draft, traveler's checks, or money order received for travel or entertainment if all three of the following statements are true:
 - The business receives it under a payment plan requiring:
 - One or more down payments and
 - Payment of the rest of the purchase price by the earliest date that any travel or entertainment item (such as airfare) is furnished for the trip or entertainment event.
 - The business receives it more than 60 days before the date on which the final payment is due.
 - The business uses payment plans with the same or substantially similar terms when selling to ultimate customers in the ordinary course of its trade or business.

Definition of a Related Transaction

The law requires that trades and businesses report transactions when customers use cash in a single transaction or a related transaction. Related transactions are transactions between a payer, or an agent of the payer, and a recipient of cash that occur within a 24-hour period. If the same payer makes two or more transactions totaling more than \$10,000 in a 24-hour period, the business must treat the

transactions as one transaction and report the payments. A 24-hour period is 24 hours, not necessarily a calendar day or banking day.

Example: A retail motorcycle dealer sells a motorcycle for \$9,000 in cash to Gary Smith at 10 a.m. During the afternoon on the same day, Mr. Smith returns to buy another motorcycle for his son and pays \$9,000 in cash. Since, both transactions occurred within a 24-hour period, they are related transactions, and the motorcycle dealer must file Form 8300.

Transactions are related even if they are more than 24 hours apart when a business knows, or has reason to know, that each is a series of connected transactions.

Example: A client pays a travel agent \$8,000 in cash for a trip. Two days later, the same client pays the travel agent \$3,000 more in cash to include another person on the trip. These are related transactions, and the travel agent must file Form 8300.

Example: A customer purchases a vehicle for \$9,000 and then within the next 12 months pays the dealership additional cash of \$1,500 for items such as a new transmission, accessories, customized paint job, and others. The dealership is not required to file a Form 8300 if the additional transactions are not part of the original sales contract and the customer has no additional legal obligation to make such additional transactions.

Taxpayer Identification Number (TIN)

A business must obtain the correct TIN of the person(s) from whom they receive the cash. If the transaction is conducted on behalf of another person or persons, the business must also obtain the TIN of that person or persons. Failure to include all required information or inclusion of incorrect information, on Form 8300, may result in civil or criminal penalties. However, a filer may be able to avoid penalties when the customer refuses to provide a TIN by showing that its failure to file is reasonable under circumstances more fully described in 26 CFR 301.6724-1(e) and (f).

Under the filing exception as described in Publication 1544, a filer is not required to provide the TIN of a person who is a nonresident individual or foreign organization. However, name and address verification is required, and the source of the verification must be included in item 14 of Form 8300. For nonresident aliens, acceptable documentation would include a passport, alien registration card or other official document.

Example: A nonresident alien with no SSN or ITIN makes a purchase requiring Form 8300 reporting and presents a Mexican driver's license to verify his name and address. A driver's license issued by a foreign government would be acceptable documentation for name and address verification purposes.

Reporting Suspicious Transactions

There may be situations where the business is suspicious about a transaction. A transaction is suspicious if:

- It appears that a person is trying to prevent a business from filing Form 8300,

- It appears that a person is trying to cause a business to file a false or incomplete Form 8300, or
- There is a sign of possible illegal activity.

The business may report suspicious transactions by checking the “suspicious transaction” box (box 1b) on the top line of Form 8300. Businesses may also call the IRS Criminal Investigation Division Hotline at 800-800-2877, or the local IRS Criminal Investigation unit to report suspicious transactions. If a business suspects that a transaction is related to terrorist activity, the business should call the Financial Institutions Hotline at 866-556-3974.

The business may voluntarily file a Form 8300 in those situations where the transaction is \$10,000 or less and suspicious. Because the Form 8300 is not required in those situations, there is no requirement to send a statement to the payor.

When to Report Payments

The amount of cash a customer uses for a transaction and when the customer makes the transaction are the determining factors for when the business must file the Form 8300. Generally, a business must file Form 8300 within 15 days after they receive the cash. If the 15th day falls on a Saturday, Sunday, or holiday the business must file the report on the next business day.

Example: An attorney receives more than \$10,000 cash from a person as advance payment for legal services. Even though no service has been performed at the time the cash is received, the attorney is required to file Form 8300 within fifteen days after the cash is received. Once a person receives (in a transaction or related transactions) cash exceeding \$10,000 in a person’s trade or business, a Form 8300 must be filed.

Multiple Payments

In some situations, the payer may arrange to pay in cash installments. If the first payment is more than \$10,000, a business must file Form 8300 within 15 days. If the first payment is not more than \$10,000, the business adds the first payment and any later payments made within one year of the first payment. When the total cash payments exceed \$10,000, the business must file Form 8300 within 15 days.

After a business files Form 8300, it must start a new count of cash payments received from that buyer. If a business receives more than \$10,000 in additional cash payments from that buyer within a 12-month period, it must file another Form 8300 within 15 days of the payment that causes the additional payments to total more than \$10,000.

If a business must file Form 8300 and the same customer makes additional payments within the 15 days before the business must file Form 8300, the business can report all the payments on one form.

Example: On January 10, a customer makes a cash payment of \$11,000 to a business. The same customer makes additional payments on the same transaction of \$4,000 on February 15, \$5,000 on March 20, and \$6,000 on May 12. By January 25 (fifteen days from January 10), the business must file

Form 8300 for the \$11,000 payment. By May 27 (fifteen days from May 12), the business must file another Form 8300 for the additional payments that total \$15,000.

Example: Hospital Emergency Rooms often treat patients that pay for the services via installment payments, with cash or monetary instruments of less than \$10,000. When an installment arrangement is established on a single transaction, in this case the treatment received during the emergency room visit, the hospital must file a Form 8300 when cash payments received exceed \$10,000 within a 12-month period. After filing the Form 8300, a new count of cash payments from the patient would begin. Since this is not a designated reporting transaction, the expanded definition of cash to include monetary instruments would not apply, unless the hospital knows that the payer is trying by the manner of the payment to keep the hospital from reporting on Form 8300 the transaction or payments.

Where to File Form 8300

Businesses can file Form 8300 electronically using the Bank Secrecy Act (BSA) Electronic Filing (E-Filing) System. E-filing is free, and is a quick and secure way for individuals to file their Form 8300s. Businesses can also mail the Form 8300 to the IRS at:

IRS Detroit Computing Center
P.O. Box 32621
Detroit, MI 48232

U.S. Territory Businesses

Businesses, including sole proprietorships, located in the U.S. territories must file Form 8300 with the IRS on cash transactions of \$10,000 or more. The U.S. Territories include American Samoa, Northern Mariana Islands, Guam, Puerto Rico and the U.S. Virgin Islands. This IRS filing requirement is in addition to any U.S. territory filing requirement the business may also have with territory tax authorities under similar territory rules, including under a U.S. territorial mirror income tax code.

Required Written Statement for Customers

When a business is required to file a Form 8300, the law requires the business to provide a written statement to each person(s) named on Form 8300 to notify them that the business has filed the form. This requirement to provide a written statement does not apply with respect to a Form 8300 filed voluntarily, including a Form 8300 to report a suspicious transaction involving less than \$10,000.

- The statement must include the following information:
- The name and address of the cash recipient's business,
- Name and telephone number of a contact person for the business,
- The total amount of reportable cash received in a 12-month period, and
- A statement that the cash recipient's is reporting the information to the IRS.

The code and regulations only specify the information that the business is required to include on a statement, not the format of the statement. A business may use its invoice for the statement of notification, as long as the invoice includes all required information. Providing a copy of Form 8300 to the payer(s), although not prohibited, is not advisable due to the sensitive information contained on the form, for example, the Employer Identification Number (commonly called an EIN) or SSN of the filer.

The business filing Form 8300 must provide its identified customers with the written statement **on or before Jan. 31** of the year that immediately follows the year the customer made the cash payment.

Recordkeeping

A business should keep a copy of every Form 8300 it files, and the required statement it sent to customers, for at least five years from the date filed.

Penalties

Businesses may be subject to civil and criminal penalties for noncompliance with the law.

Civil Penalties

For returns due to be filed on or after January 1, 2011 and prior to January 1, 2016:

Civil penalties and applicable rules are:

- The penalty for negligent failure to timely file, to include all required information or to include correct information is \$100 per return, not to exceed \$1,500,000 per calendar year. IRC Section 6721(a)(1). For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$500,000. The penalty applies to each return. IRC Section 6721(d)(1)(A).
- If any failure to file under IRC Section 6721(a) is corrected on or before the 30th day after the required filing date, the penalty is reduced to \$30 in lieu of \$100 and the maximum amount imposed shall not exceed \$250,000 per calendar year. IRC Section 6721(b)(1). The ceiling is \$75,000 for persons with average annual gross receipts of not more than \$5,000,000. IRC Section 6721(d)(1)(B).
- The penalty for intentional disregard of the requirement to timely file or to include all required information, or to include correct information is the greater of: (1) \$25,000 or (2) the amount of cash received in the transaction, not to exceed \$100,000 (with no calendar year limitation applicable). The penalty applies to each failure. IRC Section 6721(e)(2)(C).
- The penalty for negligent failure to furnish a timely, complete, and correct notice to the person(s) required to be identified on the Form 8300 is \$100 per statement, not to exceed \$1,500,000 per calendar year. IRC Section 6722(a)(1). For persons with average annual gross receipts of not more than \$5,000,000 the ceiling is \$500,000. IRC Section 6722(d)(1)(A).
- If any failure to furnish described in IRC 6722(a) is corrected within 30 days, the penalty is \$30, in lieu of \$100, and the ceiling is \$250,000. IRC 6722(b). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$75,000. IRC 6722(d)(1)(B).

- Intentional disregard of the requirement to furnish timely, correct, and complete notices is \$250 per failure or, if greater, 10 percent of the aggregate amounts of the items required to be reported correctly (with no calendar year limitation applicable). IRC Section 6722(e).

For returns due to be filed during calendar year 2017:

The IRS adjusts the penalty amounts *annually* for inflation. The following are the penalties rates for Forms 8300 due during the 2017 calendar year, on or after January 1, 2017.

Civil penalties and applicable rules are:

- The penalty for negligent failure to timely file, to include all required information or to include correct information is \$260 per return, not to exceed \$3,193,000 per calendar year. IRC Section 6721(a)(1).
- For persons with average annual gross receipts of not more than \$5,000,000, the ceiling is \$1,064,000. The penalty applies to each return. IRC Section 6721(d)(1)(A).
- If any failure to file under IRC Section 6721(a) is corrected on or before the 30th day after the required filing date, the penalty is reduced to \$50 in lieu of \$260 and the maximum amount imposed shall not exceed \$532,000 per calendar year. IRC Section 6721(b)(1). The ceiling is \$186,000 for persons with average annual gross receipts of not more than \$5,000,000. IRC Section 6721(d)(1)(B).
- The penalty for intentional disregard of the requirement to timely file or to include all required information, or to include correct information is the greater of: (1) \$26,600 or (2) the amount of cash received in the transaction, not to exceed \$106,000 (with no calendar year limitation applicable). The penalty applies to each failure. IRC Section 6721(e)(2)(C).
- The penalty for negligent failure to furnish a timely, complete, and correct notice to the person(s) required to be identified on the Form 8300 is \$260 per statement, not to exceed \$3,193,000 per calendar year. IRC Section 6722(a)(1). For persons with average annual gross receipts of not more than \$5,000,000 the ceiling is \$1,064,000. IRC Section 6722(d)(1)(A).
- If any failure to furnish described in IRC 6722(a) is corrected within 30 days, the penalty is \$50 in lieu of \$260, and the ceiling is \$532,000. IRC 6722(b). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$186,000. IRC 6722(d)(1)(B).
- If any failure described in subsection (a)(2) is corrected after the 30th day referred to in paragraph (1) but on or before August 1 of the calendar year in which the required filing date occurs the penalty is \$100 in lieu of \$260, and the ceiling is \$1,596,500. IRC 6722(b)(2). For persons with gross receipts of not more than \$5,000,000 the ceiling is \$532,000. IRC 6722(d)(1)(C).
- Intentional disregard of the requirement to furnish timely, correct, and complete notices is \$530 per failure or, if greater, 10 percent of the aggregate amounts of the items required to be reported correctly (with no calendar year limitation applicable). IRC Section 6722(e).

Criminal Penalties

A person may be subject to criminal penalties for:

- Willfully failing to file a Form 8300,
- Willfully filing a false or fraudulent Form 8300,
- Stopping, or trying to stop, a Form 8300 from being filed, or
- Setting up, helping to set up, or trying to set up a transaction in a way that would make it seem unnecessary to file Form 8300.

Any person required to file Form 8300 who willfully fails to file, fails to file timely, or fails to include complete and correct information is subject to criminal sanctions as a felony under IRC Section 7203. Sanctions include a fine up to \$25,000 (\$100,000 in the case of a corporation), and/or imprisonment up to five years, plus the costs of prosecution.

Any person who willfully files a Form 8300 which is false with regard to a material matter may be fined up to \$100,000 (\$500,000 in the case of a corporation), and/or imprisoned up to three years, plus the costs of prosecution. IRC Section 7206(1)

The penalties for failure to file may also apply to any person (including a payer) who attempts to interfere with or prevent the seller (or business) from filing a correct Form 8300. This includes any attempt to structure the transaction in a way that would make it seem unnecessary to file Form 8300. "Structuring" means breaking up a large cash transaction into small cash transactions to disguise the true amount of cash involved in the transaction.

Excerpts from Regulation Z

12 C.F.R. § 226.1 Authority, purpose, coverage, organization, enforcement, and liability.

- (a) **Authority.** This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601*et seq.*). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86,101 Stat. 552). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501*et seq.* and have been assigned OMB No. 7100-0199.
- (b) **Purpose.** The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in Subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in

variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 226.5b and mortgages that are subject to the requirements of § 226.32. The regulation prohibits certain acts or practices in connection with credit secured by a dwelling in § 226.36, and credit secured by a consumer's principal dwelling in § 226.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 226.46(b)(5).

(c) Coverage.

(1) In general, this regulation applies to each individual or business that offers or extends credit when four conditions are met:

- (i)** The credit is offered or extended to consumers;
- (ii)** The offering or extension of credit is done regularly; 1

1 [Reserved]

(iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

(iv) The credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(4) Furthermore, certain requirements of § 226.57 apply to institutions of higher education.

(d) Organization. The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth:

- (i)** The authority, purpose, coverage, and organization of the regulation;
- (ii)** The definitions of basic terms;
- (iii)** The transactions that are exempt from coverage; and
- (iv)** The method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that account-opening disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of § 226.5a and § 226.5b, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentages rate calculations, rescission requirements, and advertising.

- (4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.
 - (5) Subpart E contains special rules for mortgage transactions. Section 226.32 requires certain disclosures and provides limitations for closed-end loans that have rates or fees above specified amounts. Section 226.33 requires special disclosures, including the total annual loan cost rate, for reverse mortgage transactions. Section 226.34 prohibits specific acts and practices in connection with closed-end mortgage transactions that are subject to § 226.32. Section 226.35 prohibits specific acts and practices in connection with closed-end higher-priced mortgage loans, as defined in § 226.35(a). Section 226.36 prohibits specific acts and practices in connection with an extension of credit secured by a dwelling.
 - (6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on co-branding in the marketing of private education loans.
 - (7) Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for § 226.57(c), which applies to all open-end credit plans). Section 226.51 contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account. Section 226.52 limits the fees that a consumer can be required to pay with respect to an open-end (not home-secured) consumer credit plan during the first year after account opening. Section 226.53 contains rules on allocation of payments in excess of the minimum payment. Section 226.54 sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. Section 226.55 contains limitations on increases in annual percentage rates, fees, and charges for credit card accounts. Section 226.56 prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions. Section 226.57 sets forth rules for reporting and marketing of college student open-end credit. Section 226.58 sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.
 - (8) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of staff interpretations, special rules for certain kinds of credit plans, a list of enforcement agencies, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.
- (e) **Enforcement and liability.** Section 108 of the act contains the administrative enforcement provisions. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the act and the regulation. Section 1204 (c) of title XII of the Competitive Equality Banking Act of 1987, Public Law 100-86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the act.

12 C.F.R § 226.24 Advertising.

- (a) **Actually available terms.** If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

- (b) **Clear and conspicuous standard.** Disclosures required by this section shall be made clearly and conspicuously.
- (c) **Advertisement of rate of finance charge.** If an advertisement states a rate of finance charge, it shall state the rate as an “annual percentage rate,” using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.
- (d) **Advertisement of terms that require additional disclosures -**
- (1) **Triggering terms.** If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (d)(2) of this section:
- (i) The amount or percentage of any downpayment.
 - (ii) The number of payments or period of repayment.
 - (iii) The amount of any payment.
 - (iv) The amount of any finance charge.
- (2) **Additional terms.** An advertisement stating any of the terms in paragraph (d)(1) of this section shall state the following terms,⁴⁹ as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):
- 49 [Reserved]
- (i) The amount or percentage of the downpayment.
 - (ii) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.
 - (iii) The “annual percentage rate,” using that term, and, if the rate may be increased after consummation, that fact.
- (e) **Catalogs or other multiple-page advertisements; electronic advertisements -** (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (d)(2) of this section, it shall be considered a single advertisement if -
- (i) The table or schedule is clearly and conspicuously set forth; and
 - (ii) Any statement of the credit terms in paragraph (d)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.
- (2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with paragraph (d)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a

representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

- (f) **Disclosure of rates and payments in advertisements for credit secured by a dwelling -**
- (1) **Scope.** The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.
- (2) **Disclosure of rates -**
- (i) **In general.** If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:
- (A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
- (B) The period of time during which each simple annual rate of interest will apply; and
- (C) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in §§ 226.17(c) and 226.22.
- (ii) **Clear and conspicuous requirement.** For purposes of paragraph (f)(2)(i) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(i)(A) through (C) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(i)(C) may be disclosed with greater prominence than the other information.
- (3) **Disclosure of payments -**
- (i) **In general.** In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:
- (A) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;
- (B) The period of time during which each payment will apply; and
- (C) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.
- (ii) **Clear and conspicuous requirement.** For purposes of paragraph (f)(3)(i) of this section, a clear and conspicuous disclosure means that the required information

in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.

- (4) **Envelope excluded.** The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.
- (g) **Alternative disclosures - television or radio advertisements.** An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:
- (1) Stating clearly and conspicuously each of the additional disclosures required under paragraph (d)(2) of this section; or
 - (2) Stating clearly and conspicuously the information required by paragraph (d)(2)(iii) of this section and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.
- (h) **Tax implications.** If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:
- (1) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and
 - (2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.
 - (i) **Prohibited acts or practices in advertisements for credit secured by a dwelling.** The following acts or practices are prohibited in advertisements for credit secured by a dwelling:
 - (1) **Misleading advertising of "fixed" rates and payments.** Using the word "fixed" to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:
 - (i) In the case of an advertisement solely for one or more variable-rate transactions,
 - (A) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement; and
 - (B) Each use of the word "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

- (ii) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (**e.g.**, a stepped-rate mortgage transaction with an initial lower payment), each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or
 - (iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,
 - (A) The phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as any use of the term “fixed,” “Fixed-Rate Mortgage,” or similar terms; and
 - (B) Each use of the word “fixed” to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(ii) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.
- (2) **Misleading comparisons in advertisements.** Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:
 - (i) **In general.** The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under sections 226.24(f)(2) and (3); and
 - (ii) **Application to variable-rate transactions.** If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.
- (3) **Misrepresentations about government endorsement.** Making any statement in an advertisement that the product offered is a “government loan program”, “government-supported loan”, or is otherwise endorsed or sponsored by any federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a federal, state, or local government entity.
- (4) **Misleading use of the current lender's name.** Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:
 - (i) Discloses with equal prominence the name of the person or creditor making the advertisement; and

- (ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.
- (5) **Misleading claims of debt elimination.** Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.
- (6) **Misleading use of the term "counselor".** Using the term "counselor" in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.
- (7) **Misleading foreign-language advertisements.** Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

Excerpts from Regulation M

12 C.F.R. § 213.1 Authority, scope, purpose, and enforcement.

- (a) **Authority.** The regulation in this part, known as Regulation M, is issued by the Board of Governors of the Federal Reserve System to implement the consumer leasing provisions of the Truth in Lending Act, which is title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601*et seq.*). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501*et seq.* and have been assigned OMB control number 7100-0202.
- (b) **Scope and purpose.** This part applies to all persons that are lessors of personal property under consumer leases as those terms are defined in § 213.2(e)(1) and (h). The purpose of this part is:
 - (1) To ensure that lessees of personal property receive meaningful disclosures that enable them to compare lease terms with other leases and, where appropriate, with credit transactions;
 - (2) To limit the amount of balloon payments in consumer lease transactions; and
 - (3) To provide for the accurate disclosure of lease terms in advertising.
- (c) **Enforcement and liability.** Section 108 of the act contains the administrative enforcement provisions. Sections 112, 130, 131, and 185 of the act contain the liability provisions for failing to comply with the requirements of the act and this part.

12 C.F.R. § 213.7 Advertising.

- (a) **General rule.** An advertisement for a consumer lease may state that a specific lease of property at specific amounts or terms is available only if the lessor usually and customarily leases or will lease the property at those amounts or terms.
- (b) **Clear and conspicuous standard.** Disclosures required by this section shall be made clearly and conspicuously.
- (1) **Amount due at lease signing or delivery.** Except for the statement of a periodic payment, any affirmative or negative reference to a charge that is a part of the disclosure required under paragraph (d)(2)(ii) of this section shall not be more prominent than that disclosure.
- (2) **Advertisement of a lease rate.** If a lessor provides a percentage rate in an advertisement, the rate shall not be more prominent than any of the disclosures in § 213.4, with the exception of the notice in § 213.4(s) required to accompany the rate; and the lessor shall not use the term “annual percentage rate,” “annual lease rate,” or equivalent term.
- (c) **Catalogs or other multipage advertisements; electronic advertisements.** A catalog or other multipage advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or pages on which the table or schedule appears.
- (d) **Advertisement of terms that require additional disclosure -**
- (1) **Triggering terms.** An advertisement that states any of the following items shall contain the disclosures required by paragraph (d)(2) of this section, except as provided in paragraphs (e) and (f) of this section:
- (i) The amount of any payment; or
 - (ii) A statement of any capitalized cost reduction or other payment (or that no payment is required) prior to or at consummation or by delivery, if delivery occurs after consummation.
- (2) **Additional terms.** An advertisement stating any item listed in paragraph (d)(1) of this section shall also state the following items:
- (i) That the transaction advertised is a lease;
 - (ii) The total amount due prior to or at consummation or by delivery, if delivery occurs after consummation;
 - (iii) The number, amounts, and due dates or periods of scheduled payments under the lease;
 - (iv) A statement of whether or not a security deposit is required; and
 - (v) A statement that an extra charge may be imposed at the end of the lease term where the lessee's liability (if any) is based on the difference between

the residual value of the leased property and its realized value at the end of the lease term.

- (e) **Alternative disclosures - merchandise tags.** A merchandise tag stating any item listed in paragraph (d)(1) of this section may comply with paragraph (d)(2) of this section by referring to a sign or display prominently posted in the lessor's place of business that contains a table or schedule of the required disclosures.
- (f) **Alternative disclosures - television or radio advertisements -**
 - (1) **Toll-free number or print advertisement.** An advertisement made through television or radio stating any item listed in paragraph (d)(1) of this section complies with paragraph (d)(2) of this section if the advertisement states the items listed in paragraphs (d)(2)(i) through (iii) of this section, and:
 - (i) Lists a toll-free telephone number along with a reference that such number may be used by consumers to obtain the information required by paragraph (d)(2) of this section; or
 - (ii) Directs the consumer to a written advertisement in a publication of general circulation in the community served by the media station, including the name and the date of the publication, with a statement that information required by paragraph (d)(2) of this section is included in the advertisement. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.
 - (2) **Establishment of toll-free number.**
 - (i) The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast.
 - (ii) The lessor shall provide the information required by paragraph (d)(2) of this section orally, or in writing upon request.

15 U.S.C. 1233 - Regarding Monroney Labels TITLE 15—Commerce and Trade CHAPTER 28—Disclosure of Automobile Information

1231 - Definitions

For purposes of this chapter—

- (a) The term “manufacturer” shall mean any person engaged in the manufacturing or assembling of new automobiles, including any person importing new automobiles for resale and any person who acts for and is under the control of such manufacturer, assembler, or importer in connection with the distribution of new automobiles.
- (b) The term “person” means an individual, partnership, corporation, business trust, or any organized group of persons.
- (c) The term “automobile” includes any passenger car or station wagon.

- (d) The term “new automobile” means an automobile the equitable or legal title to which has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.
- (e) The term “dealer” shall mean any person resident or located in the United States or any Territory thereof or in the District of Columbia engaged in the sale or the distribution of new automobiles to the ultimate purchaser.
- (f) The term “final assembly point” means—
 - (1) in the case of a new automobile manufactured or assembled in the United States, or in any Territory of the United States, the plant, factory, or other place at which a new automobile is produced or assembled by a manufacturer and from which such automobile is delivered to a dealer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such automobile, whether or not such component parts are permanently installed in or on such automobile; and
 - (2) in the case of a new automobile imported into the United States, the port of importation.
- (g) The term “ultimate purchaser” means, with respect to any new automobile, the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases such new automobile for purposes other than resale.
- (h) The term “commerce” shall mean commerce among the several States of the United States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or among the Territories or between any Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation. New automobiles delivered to, or for further delivery to, ultimate purchasers within the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, Virgin Islands, American Samoa, the Trust Territories of the Pacific, the Canal Zone, Wake Island, Midway Island, Kingman Reef, Johnson Island, or within any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce.

1232 - Label and entry requirements

Every manufacturer of new automobiles distributed in commerce shall, prior to the delivery of any new automobile to any dealer, or at or prior to the introduction date of new models delivered to a dealer prior to such introduction date, securely affix to the windshield, or side window of such automobile a label on which such manufacturer shall endorse clearly, distinctly and legibly true and correct entries disclosing the following information concerning such automobile—

- (a) the make, model, and serial or identification number or numbers;
- (b) the final assembly point;
- (c) the name, and the location of the place of business, of the dealer to whom it is to be delivered;

- (d) the name of the city or town at which it is to be delivered to such dealer;
- (e) the method of transportation used in making delivery of such automobile, if driven or towed from final assembly point to place of delivery;
- (f) the following information:
 - (1) the retail price of such automobile suggested by the manufacturer;
 - (2) the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment, physically attached to such automobile at the time of its delivery to such dealer, which is not included within the price of such automobile as stated pursuant to paragraph (1);
 - (3) the amount charged, if any, to such dealer for the transportation of such automobile to the location at which it is delivered to such dealer; and
 - (4) the total of the amounts specified pursuant to paragraphs (1), (2), and (3);
- (g) if one or more safety ratings for such automobile have been assigned and formally published or released by the National Highway Traffic Safety Administration under the New Car Assessment Program, information about safety ratings that—
 - (1) includes a graphic depiction of the number of stars, or other applicable rating, that corresponds to each such assigned safety rating displayed in a clearly differentiated fashion indicating the maximum possible safety rating;
 - (2) refers to safety rating categories that may include frontal impact crash tests, side impact crash tests, and rollover resistance tests (whether or not such automobile has been assigned a safety rating for such tests);
 - (3) contains information describing the nature and meaning of the crash test data presented and a reference to additional vehicle safety resources, including <http://www.safercar.gov>; [1] and
 - (4) is presented in a legible, visible, and prominent fashion and covers at least—
 - (A) 8 percent of the total area of the label; or
 - (B) an area with a minimum length of 4½ inches and a minimum height of 3½ inches; and
- (h) if an automobile has not been tested by the National Highway Traffic Safety Administration under the New Car Assessment Program, or safety ratings for such automobile have not been assigned in one or more rating categories, a statement to that effect.

1233. Violations and penalties

- (a) Failure to Affix Required Label

Any manufacturer of automobiles distributed in commerce who willfully fails to affix to any new automobile manufactured or imported by him the label required by section 1232 of this title shall be fined not more than \$1,000. Such failure with respect to each automobile shall constitute a separate offense.

(b) Failure to Endorse Required Label

Any manufacturer of automobiles distributed in commerce who willfully fails to endorse clearly, distinctly and legibly any label as required by section 1232 of this title, or who makes a false endorsement of any such label, shall be fined not more than \$1,000. Such failure or false endorsement with respect to each automobile shall constitute a separate offense.

(c) Removal, Alteration, or Illegibility of Required Label

Any person who willfully removes, alters, or renders illegible any label affixed to a new automobile pursuant to section 1232 of this title, or any endorsement thereon, prior to the time that such automobile is delivered to the actual custody and possession of the ultimate purchaser of such new automobile, except where the manufacturer relabels the automobile in the event the same is rerouted, repurchased, or reacquired by the manufacturer of such automobile, shall be fined not more than \$1,000, or imprisoned not more than one year, or both. Such removal, alteration, or rendering illegible with respect to each automobile shall constitute a separate offense.

49 U.S. Code Chapter 327 - ODOMETERS

32701 - Findings and purposes

(a) Findings. —Congress finds that—

- (1)** buyers of motor vehicles rely heavily on the odometer reading as an index of the condition and value of a vehicle;
- (2)** buyers are entitled to rely on the odometer reading as an accurate indication of the mileage of the vehicle;
- (3)** an accurate indication of the mileage assists a buyer in deciding on the safety and reliability of the vehicle; and
- (4)** motor vehicles move in, or affect, interstate and foreign commerce.

(b) Purposes.—The purposes of this chapter are—

- (1)** to prohibit tampering with motor vehicle odometers; and
- (2)** to provide safeguards to protect purchasers in the sale of motor vehicles with altered or reset odometers.

32702 - Definitions

- (1)** “auction company” means a person taking possession of a motor vehicle owned by another to sell at an auction.

- (2) “dealer” means a person that sold at least 5 motor vehicles during the prior 12 months to buyers that in good faith bought the vehicles other than for resale.
- (3) “distributor” means a person that sold at least 5 motor vehicles during the prior 12 months for resale.
- (4) “leased motor vehicle” means a motor vehicle leased to a person for at least 4 months by a lessor that leased at least 5 vehicles during the prior 12 months.
- (5) “odometer” means an instrument or system of components for measuring and recording the distance a motor vehicle is driven, but does not include an auxiliary instrument or system of components designed to be reset by the operator of the vehicle to record mileage of a trip.
- (6) “repair” and “replace” mean to restore to a sound working condition by replacing any part of an odometer or by correcting any inoperative part of an odometer.
- (7) “title” means the certificate of title or other document issued by the State indicating ownership.
- (8) “transfer” means to change ownership by sale, gift, or any other means.

32703 - Preventing tampering

A person may not—

- (1) advertise for sale, sell, use, install, or have installed, a device that makes an odometer of a motor vehicle register a mileage different from the mileage the vehicle was driven, as registered by the odometer within the designed tolerance of the manufacturer of the odometer;
- (2) disconnect, reset, alter, or have disconnected, reset, or altered, an odometer of a motor vehicle intending to change the mileage registered by the odometer;
- (3) with intent to defraud, operate a motor vehicle on a street, road, or highway if the person knows that the odometer of the vehicle is disconnected or not operating; or
- (4) conspire to violate this section or section 32704 or 32705 of this title.

32704 - Service, repair, and replacement

- (a) **Adjusting Mileage.** —A person may service, repair, or replace an odometer of a motor vehicle if the mileage registered by the odometer remains the same as before the service, repair, or replacement. If the mileage cannot remain the same—
 - (1) the person shall adjust the odometer to read zero; and
 - (2) the owner of the vehicle or agent of the owner shall attach a written notice to the left door frame of the vehicle specifying the mileage before the service, repair, or replacement and the date of the service, repair, or replacement.
- (b) **Removing or Altering Notice.** — A person may not, with intent to defraud, remove or alter a notice attached to a motor vehicle as required by this section.

32705 - Disclosure requirements on transfer of motor vehicles

- (a) (1) Disclosure Requirements. — Under regulations prescribed by the Secretary of Transportation that include the way in which information is disclosed and retained under this section, a person transferring ownership of a motor vehicle shall give the transferee the following written disclosure:
- (A) Disclosure of the cumulative mileage registered on the odometer.
 - (B) Disclosure that the actual mileage is unknown, if the transferor knows that the odometer reading is different from the number of miles the vehicle has actually traveled.
- (2) A person transferring ownership of a motor vehicle may not violate a regulation prescribed under this section or give a false statement to the transferee in making the disclosure required by such a regulation.
- (3) A person acquiring a motor vehicle for resale may not accept a written disclosure under this section unless it is complete.
- (4) (A) This subsection shall apply to all transfers of motor vehicles (unless otherwise exempted by the Secretary by regulation), except in the case of transfers of new motor vehicles from a vehicle manufacturer jointly to a dealer and a person engaged in the business of renting or leasing vehicles for a period of 30 days or less.
- (B) For purposes of subparagraph (A), the term “new motor vehicle” means any motor vehicle driven with no more than the limited use necessary in moving, transporting, or road testing such vehicle prior to delivery from the vehicle manufacturer to a dealer, but in no event shall the odometer reading of such vehicle exceed 300 miles.
- (5) The Secretary may exempt such classes or categories of vehicles as the Secretary deems appropriate from these requirements. Until such time as the Secretary amends or modifies the regulations set forth in 49 CFR 580.6, such regulations shall have full force and effect.
- (b) **Mileage Statement Requirement for Licensing.** —
- (1) A motor vehicle the ownership of which is transferred may not be licensed for use in a State unless the transferee, in submitting an application to a State for the title on which the license will be issued, includes with the application the transferor’s title and, if that title contains the space referred to in paragraph (3)(A)(iii) of this subsection, a statement, signed and dated by the transferor, of the mileage disclosure required under subsection (a) of this section. This paragraph does not apply to a transfer of ownership of a motor vehicle that has not been licensed before the transfer.

- (2) (A)** Under regulations prescribed by the Secretary, if the title to a motor vehicle issued to a transferor by a State is in the possession of a lienholder when the transferor transfers ownership of the vehicle, the transferor may use a written power of attorney (if allowed by State law) in making the mileage disclosure required under subsection (a) of this section. Regulations prescribed under this paragraph—
- (i)** shall prescribe the form of the power of attorney;
 - (ii)** shall provide that the form be printed by means of a secure printing process (or other secure process);
 - (iii)** shall provide that the State issue the form to the transferee;
 - (iv)** shall provide that the person exercising the power of attorney retain a copy and submit the original to the State with a copy of the title showing the restatement of the mileage;
 - (v)** may require that the State retain the power of attorney and the copy of the title for an appropriate period or that the State adopt alternative measures consistent with section 32701(b) of this title, after considering the costs to the State;
 - (vi)** shall ensure that the mileage at the time of transfer be disclosed on the power of attorney document;
 - (vii)** shall ensure that the mileage be restated exactly by the person exercising the power of attorney in the space referred to in paragraph (3)(A)(iii) of this subsection;
 - (viii)** may not require that a motor vehicle be titled in the State in which the power of attorney was issued;
 - (ix)** shall consider the need to facilitate normal commercial transactions in the sale or exchange of motor vehicles; and
 - (x)** shall provide other conditions the Secretary considers appropriate.
- (B)** Section 32709(a) and (b) applies to a person granting or granted a power of attorney under this paragraph.
- (3) (A)** A motor vehicle the ownership of which is transferred may not be licensed for use in a State unless the title issued by the State to the transferee—
- (i)** is produced by means of a secure printing process (or other secure process);
 - (ii)** indicates the mileage disclosure required to be made under subsection (a) of this section; and

(iii) contains a space for the transferee to disclose the mileage at the time of a future transfer and to sign and date the disclosure.

(B) Subparagraph (A) of this paragraph does not require a State to verify, or preclude a State from verifying, the mileage information contained in the title.

(c) Leased Motor Vehicles.—

(1) For a leased motor vehicle, the regulations prescribed under subsection (a) of this section shall require written disclosure about mileage to be made by the lessee to the lessor when the lessor transfers ownership of that vehicle.

(2) Under those regulations, the lessor shall provide written notice to the lessee of—

(A) the lessee's mileage disclosure requirements under paragraph (1) of this subsection; and

(B) the penalties for failure to comply with those requirements.

(3) The lessor shall retain the disclosures made by a lessee under paragraph (1) of this subsection for at least 4 years following the date the lessor transfers the leased motor vehicle.

(4) If the lessor transfers ownership of a leased motor vehicle without obtaining possession of the vehicle, the lessor, in making the disclosure required by subsection (a) of this section, may indicate on the title the mileage disclosed by the lessee under paragraph (1) of this subsection unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

(d) State Alternate Vehicle Mileage Disclosure Requirements.—

The requirements of subsections (b) and (c)(1) of this section on the disclosure of motor vehicle mileage when motor vehicles are transferred or leased apply in a State unless the State has in effect alternate motor vehicle mileage disclosure requirements approved by the Secretary. The Secretary shall approve alternate motor vehicle mileage disclosure requirements submitted by a State unless the Secretary decides that the requirements are not consistent with the purpose of the disclosure required by subsection (b) or (c), as the case may be.

(e) Auction Sales.—If a motor vehicle is sold at an auction, the auction company conducting the auction shall maintain the following records for at least 4 years after the date of the sale:

(1) the name of the most recent owner of the motor vehicle (except the auction company) and the name of the buyer of the motor vehicle.

(2) the vehicle identification number required under chapter 301 or 331 of this title.

(3) the odometer reading on the date the auction company took possession of the motor vehicle.

(f) Application and Revision of State Law. —

- (1) Except as provided in paragraph (2) of this subsection, subsections (b)–(e) of this section apply to the transfer of a motor vehicle after April 28, 1989.
 - (2) If a State requests, the Secretary shall assist the State in revising its laws to comply with subsection (b) of this section. If a State requires time beyond April 28, 1989, to revise its laws to achieve compliance, the Secretary, on request of the State, may grant additional time that the Secretary considers reasonable by publishing a notice in the Federal Register. The notice shall include the reasons for granting the additional time. In granting additional time, the Secretary shall ensure that the State is making reasonable efforts to achieve compliance.
- (g) Electronic Disclosures.—
- (1) Not later than 18 months after the date of enactment of the Motor Vehicle and Highway Safety Improvement Act of 2012, in carrying out this section, the Secretary shall prescribe regulations permitting any written disclosures or notices and related matters to be provided electronically.
 - (2) Notwithstanding paragraph (1) and subject to paragraph (3), a State, without approval from the Secretary under subsection (d), may allow for written disclosures or notices and related matters to be provided electronically if—
 - (A) in compliance with—
 - (i) the requirements of subchapter 1 of chapter 96 of title 15; [1] or
 - (ii) the requirements of a State law under section 7002(a) of title 15;¹ and
 - (B) the disclosures or notices otherwise meet the requirements under this section, including appropriate authentication and security measures.
 - (3) Paragraph (2) ceases to be effective on the date the regulations under paragraph (1) become effective.

32706 - Inspections, investigations, and records

(a) Authority to Inspect and Investigate. —

Subject to section 32707 of this title, the Secretary of Transportation may conduct an inspection or investigation necessary to carry out this chapter or a regulation prescribed or order issued under this chapter. The Secretary shall cooperate with State and local officials to the greatest extent possible in conducting an inspection or investigation. The Secretary may give the Attorney General information about a violation of this chapter or a regulation prescribed or order issued under this chapter.

(b) Entry, Inspection, and Impoundment. —

- (1) In carrying out subsection (a) of this section, an officer or employee designated by the Secretary, on display of proper credentials and written notice to the owner, operator, or agent in charge, may—
 - (A) enter and inspect commercial premises in which a motor vehicle or motor vehicle equipment is manufactured, held for shipment or sale, maintained, or repaired;
 - (B) enter and inspect noncommercial premises in which the Secretary reasonably believes there is a motor vehicle or motor vehicle equipment that is an object of a violation of this chapter;
 - (C) inspect that motor vehicle or motor vehicle equipment; and
 - (D) impound for not more than 72 hours for inspection a motor vehicle or motor vehicle equipment that the Secretary reasonably believes is an object of a violation of this chapter.
- (2) An inspection or impoundment under this subsection shall be conducted at a reasonable time, in a reasonable way, and with reasonable promptness. The written notice may consist of a warrant issued under section 32707 of this title.

(c) Reasonable Compensation. —

When the Secretary impounds for inspection a motor vehicle (except a vehicle subject to subchapter I of chapter 135 of this title) or motor vehicle equipment under subsection (b)(1)(D) of this section, the Secretary shall pay reasonable compensation to the owner of the vehicle or equipment if the inspection or impoundment results in denial of use, or reduction in value, of the vehicle or equipment.

(d) Records and Information Requirements. .—

- (1) To enable the Secretary to decide whether a dealer or distributor is complying with this chapter and regulations prescribed and orders issued under this chapter, the Secretary may require the dealer or distributor—
 - (A) to keep records;
 - (B) to provide information from those records if the Secretary states the purpose for requiring the information and identifies the information to the fullest extent practicable; and
 - (C) to allow an officer or employee designated by the Secretary to inspect relevant records of the dealer or distributor.
- (2) This subsection and subsection (e)(1)(B) of this section do not authorize the Secretary to require a dealer or distributor to provide information on a regular periodic basis.

(e) Administrative Authority and Civil Actions to Enforce.

- (1) In carrying out this chapter, the Secretary may—

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- (A) inspect and copy records of any person at reasonable times;
 - (B) order a person to file written reports or answers to specific questions, including reports or answers under oath; and
 - (C) conduct hearings, administer oaths, take testimony, and require (by subpoena or otherwise) the appearance and testimony of witnesses and the production of records the Secretary considers advisable.
- (2) A witness summoned under this subsection is entitled to the same fee and mileage the witness would have been paid in a court of the United States.
- (3) A civil action to enforce a subpoena or order of the Secretary under this subsection may be brought in the United States district court for any judicial district in which the proceeding by the Secretary is conducted. The court may punish a failure to obey an order of the court to comply with the subpoena or order of the Secretary as a contempt of court.

(f) Prohibitions. —

A person may not fail to keep records, refuse access to or copying of records, fail to make reports or provide information, fail to allow entry or inspection, or fail to permit impoundment, as required under this section.

32707 - Administrative warrants

(a) Definition.—

In this section, “probable cause” means a valid public interest in the effective enforcement of this chapter or a regulation prescribed under this chapter sufficient to justify the inspection or impoundment in the circumstances stated in an application for a warrant under this section.

(b) Warrant Requirement and Issuance.—

- (1) Except as provided in paragraph (4) of this subsection, an inspection or impoundment under section 32706 of this title may be carried out only after a warrant is obtained.
- (2) A judge of a court of the United States or a State court of record or a United States magistrate may issue a warrant for an inspection or impoundment under section 32706 of this title within the territorial jurisdiction of the court or magistrate. The warrant must be based on an affidavit that—
- (A) establishes probable cause to issue the warrant; and
 - (B) is sworn to before the judge or magistrate by an officer or employee who knows the facts alleged in the affidavit.

- (3)** The judge or magistrate shall issue the warrant when the judge or magistrate decides there is a reasonable basis for believing that probable cause exists to issue the warrant. The warrant must—
- (A)** identify the premises, property, or motor vehicle to be inspected and the items or type of property to be impounded;
 - (B)** state the purpose of the inspection, the basis for issuing the warrant, and the name of the affiant;
 - (C)** direct an individual authorized under section 32706 of this title to inspect the premises, property, or vehicle for the purpose stated in the warrant and, when appropriate, to impound the property specified in the warrant;
 - (D)** direct that the warrant be served during the hours specified in the warrant; and
 - (E)** name the judge or magistrate with whom proof of service is to be filed.
- (4)** A warrant under this section is not required when—
- (A)** the owner, operator, or agent in charge of the premises consents;
 - (B)** it is reasonable to believe that the mobility of the motor vehicle to be inspected makes it impractical to obtain a warrant;
 - (C)** an application for a warrant cannot be made because of an emergency;
 - (D)** records are to be inspected and copied under section 32706(e)(1)(A) of this title; or
 - (E)** a warrant is not constitutionally required.

(c) Service and Impoundment of Property.

- (1)** A warrant issued under this section must be served and proof of service filed not later than 10 days after its issuance date. The judge or magistrate may allow additional time in the warrant if the Secretary of Transportation demonstrates a need for additional time. Proof of service must be filed promptly with a written inventory of the property impounded under the warrant. The inventory shall be made in the presence of the individual serving the warrant and the individual from whose possession or premises the property was impounded, or if that individual is not present, a credible individual except the individual making the inventory. The individual serving the warrant shall verify the inventory. On request, the judge or magistrate shall send a copy of the inventory to the individual from whose possession or premises the property was impounded and to the applicant for the warrant.
- (2)** When property is impounded under a warrant, the individual serving the warrant shall—
- (A)** give the person from whose possession or premises the property was impounded a copy of the warrant and a receipt for the property; or

- (B) leave the copy and receipt at the place from which the property was impounded.
- (3) The judge or magistrate shall file the warrant, proof of service, and all documents filed about the warrant with the clerk of the United States district court for the judicial district in which the inspection is made.

32708 - Confidentiality of information

- (a) **General.** —Information obtained by the Secretary of Transportation under this chapter related to a confidential matter referred to in section 1905 of title 18 may be disclosed only—
 - (1) to another officer or employee of the United States Government for use in carrying out this chapter; or
 - (2) in a proceeding under this chapter.
- (b) **Withholding Information from Congress.** —

This section does not authorize information to be withheld from a committee of Congress authorized to have the information.

32709 - Penalties and enforcement

- (a) **Civil Penalty.** —
 - (1) A person that violates this chapter or a regulation prescribed or order issued under this chapter is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation. A separate violation occurs for each motor vehicle or device involved in the violation. The maximum penalty under this subsection for a related series of violations is \$1,000,000.
 - (2) The Secretary of Transportation shall impose a civil penalty under this subsection. The Attorney General shall bring a civil action to collect the penalty. Before referring a penalty claim to the Attorney General, the Secretary may compromise the amount of the penalty. Before compromising the amount of the penalty, the Secretary shall give the person charged with a violation an opportunity to establish that the violation did not occur.
 - (3) In determining the amount of a civil penalty under this subsection, the Secretary shall consider—
 - (A) the nature, circumstances, extent, and gravity of the violation;
 - (B) with respect to the violator, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue doing business; and

(C) other matters that justice requires.

(b) Criminal Penalty. —

A person that knowingly and willfully violates this chapter or a regulation prescribed or order issued under this chapter shall be fined under title 18, imprisoned for not more than 3 years, or both. If the person is a corporation, the penalties of this subsection also apply to a director, officer, or individual agent of a corporation who knowingly and willfully authorizes, orders, or performs an act in violation of this chapter or a regulation prescribed or order issued under this chapter without regard to penalties imposed on the corporation.

(c) Civil Action by Attorney General. .—

The Attorney General may bring a civil action to enjoin a violation of this chapter or a regulation prescribed or order issued under this chapter. The action may be brought in the United States district court for the judicial district in which the violation occurred or the defendant is found, resides, or does business. Process in the action may be served in any other judicial district in which the defendant resides or is found. A subpoena for a witness in the action may be served in any judicial district.

(d) Civil Actions by States. —

- (1) When a person violates this chapter or a regulation prescribed or order issued under this chapter, the chief law enforcement officer of the State in which the violation occurs may bring a civil action—
 - (A) to enjoin the violation; or
 - (B) to recover amounts for which the person is liable under section 32710 of this title for each person on whose behalf the action is brought.
- (2) An action under this subsection may be brought in an appropriate United States district court or in a State court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues.

32710 - Civil actions by private persons

(a) Violation and Amount of Damages. —

A person that violates this chapter or a regulation prescribed or order issued under this chapter, with intent to defraud, is liable for 3 times the actual damages or \$10,000, whichever is greater.

(b) Civil Actions. —

A person may bring a civil action to enforce a claim under this section in an appropriate United States district court or in another court of competent jurisdiction. The action must be brought not later than 2 years after the claim accrues. The court shall award costs and a reasonable attorney's fee to the person when a judgment is entered for that person.

32711 - Relationship to State law

Except to the extent that State law is inconsistent with this chapter, this chapter does not—

- (1) affect a State law on disconnecting, altering, or tampering with an odometer with intent to defraud; or
- (2) exempt a person from complying with that law.

TITLE 49—Transportation Part 580—Odometer Disclosure Requirements

580.5 Disclosure of odometer information.

- (a) Each title, at the time it is issued to the transferee, must contain the mileage disclosed by the transferor when ownership of the vehicle was transferred and contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of future transfer.
- (b) Any documents which are used to reassign a title shall contain a space for the information required to be disclosed under paragraphs (c), (d), (e) and (f) of this section at the time of transfer of ownership.
- (c) In connection with the transfer of ownership of a motor vehicle, each transferor shall disclose the mileage to the transferee in writing on the title or, except as noted below, on the document being used to reassign the title. In the case of a transferor in whose name the vehicle is titled, the transferor shall disclose the mileage on the title, and not on a reassignment document. This written disclosure must be signed by the transferor, including the printed name. In connection with the transfer of ownership of a motor vehicle in which more than one person is a transferor, only one transferor need sign the written disclosure. In addition to the signature and printed name of the transferor, the written disclosure must contain the following information:
 - (1) The odometer reading at the time of transfer (not to include tenths of miles);
 - (2) The date of transfer;
 - (3) The transferor's name and current address;
 - (4) The transferee's name and current address; and
 - (5) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number.
- (d) In addition to the information provided under paragraph (c) of this section, the statement shall refer to the Federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.
- (e) In addition to the information provided under paragraphs (c) and (d) of this section,
 - (1) The transferor shall certify that to the best of his knowledge the odometer reading reflects the actual mileage, or;

- (2) If the transferor knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
- (3) If the transferor knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading does not reflect the actual mileage, and should not be relied upon. This statement shall also include a warning notice to alert the transferee that a discrepancy exists between the odometer reading and the actual mileage.
- (f) The transferee shall sign the disclosure statement, print his name, and return a copy to his transferor.
- (g) If the vehicle has not been titled or if the title does not contain a space for the information required, the written disclosure shall be executed as a separate document.
- (h) No person shall sign an odometer disclosure statement as both the transferor and transferee in the same transaction, unless permitted by §§ 580.13 or 580.14.

580.7 Disclosure of odometer information for leased motor vehicles.

- (a) Before executing any transfer of ownership document, each lessor of a leased motor vehicle shall notify the lessee in writing that the lessee is required to provide a written disclosure to the lessor regarding the mileage. This notice shall contain a reference to the federal law and shall state that failure to complete or providing false information may result in fines and/or imprisonment. Reference may also be made to applicable State law.
- (b) In connection with the transfer of ownership of the leased motor vehicle, the lessee shall furnish to the lessor a written statement regarding the mileage of the vehicle. This statement must be signed by the lessee and, in addition to the information required by paragraph (a) of this section, shall contain the following information:
 - (1) The printed name of the person making the disclosure;
 - (2) The current odometer reading (not to include tenths of miles);
 - (3) The date of the statement;
 - (4) The lessee's name and current address;
 - (5) The lessor's name and current address;
 - (6) The identity of the vehicle, including its make, model, year, and body type, and its vehicle identification number;
 - (7) The date that the lessor notified the lessee of disclosure requirements;
 - (8) The date that the completed disclosure statement was received by the lessor; and
 - (9) The signature of the lessor.

- (c) In addition to the information provided under paragraphs (a) and (b) of this section,
- (1) The lessee shall certify that to the best of his knowledge the odometer reading reflects the actual mileage; or
 - (2) If the lessee knows that the odometer reading reflects the amount of mileage in excess of the designed mechanical odometer limit, he shall include a statement to that effect; or
 - (3) If the lessee knows that the odometer reading differs from the mileage and that the difference is greater than that caused by odometer calibration error, he shall include a statement that the odometer reading is not the actual mileage and should not be relied upon.
- (d) If the lessor transfers the leased vehicle without obtaining possession of it, the lessor may indicate on the title the mileage disclosed by the lessee under paragraph (b) and (c) of this section, unless the lessor has reason to believe that the disclosure by the lessee does not reflect the actual mileage of the vehicle.

580.8 Odometer disclosure statement retention.

- (a) Dealers and distributors of motor vehicles who are required by this part to execute an odometer disclosure statement shall retain for five years a photostat, carbon or other facsimile copy of each odometer mileage statement which they issue and receive. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.
- (b) Lessors shall retain, for five years following the date they transfer ownership of the leased vehicle, each odometer disclosure statement which they receive from a lessee. They shall retain all odometer disclosure statements at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.
- (c) Dealers and distributors of motor vehicles who are granted a power of attorney by their transferor pursuant to § 580.13, or by their transferee pursuant to § 580.14, shall retain for five years a photostat, carbon, or other facsimile copy of each power of attorney that they receive. They shall retain all powers of attorney at their primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval.

580.9 Odometer record retention for auction companies.

Each auction company shall establish and retain at its primary place of business in an order that is appropriate to business requirements and that permits systematic retrieval, for five years following the date of sale of each motor vehicle, the following records:

- (a) The name of the most recent owner (other than the auction company);

- (b) The name of the buyer;
- (c) The vehicle identification number; and
- (d) The odometer reading on the date which the auction company took possession of the motor vehicle.

580.17 Exemptions.

Notwithstanding the requirements of §§ 580.5 and 580.7:

- (a) A transferor or a lessee of any of the following motor vehicles need not disclose the vehicle's odometer mileage:
 - (1) A vehicle having a Gross Vehicle Weight Rating, as defined in § 571.3 of this title, of more than 16,000 pounds;
 - (2) A vehicle that is not self-propelled;
 - (3) A vehicle that was manufactured in a model year beginning at least ten years before January 1 of the calendar year in which the transfer occurs; or

Example to paragraph (a)(3):

For vehicle transfers occurring during calendar year 1998, model year 1988 or older vehicles are exempt.

- (4) A vehicle sold directly by the manufacturer to any agency of the United States in conformity with contractual specifications.
- (b) A transferor of a new vehicle prior to its first transfer for purposes other than resale need not disclose the vehicle's odometer mileage.
- (c) A lessor of any of the vehicles listed in paragraph (a) of this section need not notify the lessee of any of these vehicles of the disclosure requirements of § 580.7.