



January 29, 2016

Ms. Lori Chavez
Assistant Attorney General
Office of the Attorney General
Consumer Protection Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Re: Proposed Amended Rule 12.2.14 – misrepresentation of age and condition of motor vehicles

Dear Ms. Chavez:

On behalf of the American Financial Services Association (AFSA),¹ which represents companies engaged in the financing and leasing of motor vehicles, thank you in advance for your consideration of our comments regarding the proposed amended rule relating to the misrepresentation of the age and condition of motor vehicles, 12.2.14 NMAC *et seq.* (Published in Volume XXVI, Issue 24 of the New Mexico Register). We understand and support the rule’s intent to protect buyers from unfair and deceptive practices involving the misrepresentation of the age and condition of a motor vehicle in retail motor vehicles sales transactions. However, we believe the proposed amended rule would benefit from greater clarity as to the definition of “seller” in Section 12.2.14.7(L). As written, the broad definition of “seller” would impose unnecessary and burdensome requirements on finance companies involved in the sale of “off-lease” vehicles to lessees.

At the end of the term of a vehicle lease agreement, the leased vehicle (which is owned by the lessor or an affiliate) may be sold, from time to time, by the lessor to the dealer that handles the return of that vehicle for the lessee or to the lessee. When a leased vehicle is returned, a representative of the lessor of the vehicle is generally not present, as the lessor typically relies on a dealer to process the return. Therefore, complying with the rule’s requirements could impose significant costs and delays on the sale of off-lease vehicles to lessees, as financial institutions leasing vehicles would likely have to hire more personnel to conduct these transactions and meet the additional disclosure and inspection requirements.

In lease buyouts, the lessor/seller of the vehicle would not have possession of the vehicle in order to determine the vehicle’s condition as specified in this rule. In addition, lessees are not likely to derive significant benefits from the proposed rule because lessees should already be well aware of the age and condition of the leased vehicle, as they have had possession of the vehicle for the term of the lease. For these reasons, AFSA believes the proposed amended rule should expressly

¹ Founded in 1916, the American Financial Services Association is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including vehicle financing/leasing, retail sales finance, traditional installment loans, payment cards and mortgages. AFSA members do not provide payday or vehicle title loans.

exempt sales of leased vehicles to lessees (or their designees/assignees) who elect to purchase the vehicle at the end of their lease term.

Leasing is a more affordable way for consumers to drive vehicles with the latest safety and emissions equipment. Monthly payments can be lower than payments associated with financing the purchase of a vehicle, thus providing an attractive alternative to some consumers. Imposing these unnecessary and burdensome requirements on the sale of off-lease vehicles could result in an increase in the cost of leasing, for no appreciative benefit to lessees.

To prevent this unnecessary and costly burden on financial institutions, and thus their customers, we respectfully request that the amended rule expressly exempt sales by lessors to lessees (or their designees/assignees) pursuant to a purchase option under a motor vehicle lease agreement. We also ask that the rule expressly exempt vehicle redemptions by finance customers after a financial institution has taken possession of the vehicle, such as redemptions in the case of vehicle repossession. As such, we propose that the definition of “retail seller” or “seller” contained in 12.2.14.7(L) be clarified to state:

"Retail seller" or "seller" shall mean natural persons, corporations, trusts, partnerships, associations, cooperative associations, clubs, companies, firms, joint ventures or syndicates who regularly and principally engage in the business of selling motor vehicles to retail buyers for profit, but does not include selling motor vehicles: (i) to a lessee pursuant to a purchase option under a motor vehicle lease agreement, (ii) to a previous owner or lessee after a repossession, or (iii) to other motor vehicle dealers licensed with the New Mexico Motor Taxation and Revenue Department-Motor Vehicle Division pursuant to Section 66-4-1(A) NMSA 1978.

On behalf of our members, thank you again for your consideration of our concerns regarding the proposed amended rule. If you have any questions, or would like to discuss this matter further, please do not hesitate to contact me at 202-776-7306 or ssullivan@afsamail.org.

Sincerely,



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