

**FORD MOTOR COMPANY**

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## **Ford Motor Company's Comments on Vehicle Buybacks -- FTC File No. P96 4402**

In November, 1995, the Consumers for Auto Reliability and Safety and other consumer groups ("petitioners") filed a petition asking the Federal Trade Commission ("FTC" or "Commission") to initiate either a rulemaking proceeding or an enforcement action regarding practices associated with the resale of vehicles repurchased by manufacturers due to defects. Specifically, petitioners allege manufacturers and dealers fail to disclose the prior history of these vehicles to subsequent purchasers. The Commission has requested public comment on the issues raised by the petition.

As a manufacturer and marketer of motor vehicles, Ford Motor Company ("Ford") has repurchased motor vehicles from consumers for both customer satisfaction purposes and pursuant to state lemon laws. As such, Ford is very interested in all aspects of regulation relating to the repurchase and resale of motor vehicles. In addition, Ford believes it is necessary to respond to the allegations in the petition, to explain Ford's proactive efforts not merely to comply with state disclosure laws, but to go beyond state law requirements in order to come as close as possible to a guarantee of effective disclosure, and to recommend a preemptive federal legislative initiative that would maximize disclosures to retail customers, severely limit the possibility of so-called "lemon laundering" and represent a workable framework for manufacturers.

Ford's processes are the most comprehensive in the industry and, as previously mentioned, Ford has taken steps not required by law to try to ensure that customers receive appropriate disclosure at the time of sale. Several states have advised Ford that Ford's processes are viewed as the "model" that should be followed by others in the industry to ensure that customers receive appropriate disclosure. While we appreciate these comments, Ford takes a different view as to what an ideal disclosure regime should be. Even with all Ford's proactive efforts, pre-sale disclosure may not occur in every instance. For this reason, Ford believes that federal preemptive legislation or regulation is imperative in order to ensure that consumers receive disclosure of the history of a reacquired vehicle prior to sale, and for manufacturers to be provided a workable regulatory framework. Ford believes strongly that the disclosure method outlined below should be adopted as federal preemptive legislation or regulation.

### **Proposed Preemptive Legislative Initiative**

The most effective way to ensure that customers are informed of the history of a reacquired vehicle prior to retail sale would be to disclose the history of a reacquired vehicle on the Used Car Buyers Guide and to establish an Information Bank for Used Vehicles that would be available for consumers, dealers, and others to consult prior to purchasing a vehicle.

Pursuant to regulations promulgated by the Commission (16 C.F.R. Sec. 455 *et. seq.*, the Used Motor Vehicle Trade Regulation Rule) dealers are already required to disclose certain information to prospective purchasers of a used vehicle on the Buyers Guide. The FTC has the authority to modify this rule to incorporate additional information to be disclosed regarding reacquired vehicles.

Under this proposal, manufacturers would be required to disclose to the purchasing dealer the information, outlined below, required by existing state disclosure laws governing reacquired vehicles. The purchasing dealer would be required by the modified Rule to include this information in a prescribed manner on the Buyers Guide.

This method of disclosure would be very effective in that prospective customers would become aware of the buyback status of a vehicle at the time the customer examines or test drives the vehicle. This allows prospective purchasers to make their purchase decision with all material facts regarding the vehicle before them.

In addition to requiring disclosure of material facts via the federally-mandated Buyers Guide, Ford recommends that manufacturers should be required to report the reason for repurchasing a vehicle to a centrally maintained Information Bank for Used Vehicles. The Information Bank must be designed so that manufacturers' proprietary information (including statistics regarding the number of reacquired vehicles and reasons for buybacks) is kept confidential, while providing information regarding the history of particular used vehicles to prospective purchasers. Required information would include the fact that the vehicle had been repurchased by a manufacturer, the nature of any alleged nonconformity, and any repair(s) performed to address these concerns. Prospective purchasers would be able to easily obtain this information by making a toll-free call to the Information Bank and providing the Vehicle Identification Number which is prominently displayed on all vehicles, or by reference to the Internet.

Consumer education programs about the Information Bank's existence and function would be implemented to ensure that consumers are aware this information is available. Education could take place via public service campaigns on radio and television to promote general awareness in the community. More specific information regarding the Information Bank would be made available at the point where consumers make a used car purchase decision. Brochures and signs could be prominently displayed to ensure that any individual making a purchase decision is aware that they may easily access the history of a used vehicle.

Ford's proposed methods of ensuring that all relevant information is available to prospective purchasers would be especially effective because disclosure would not be dependent upon information passing through several levels of the distribution chain of repurchased vehicles. Prospective purchasers would be able to determine for themselves the history of a vehicle by (1) examining the Buyers Guide for disclosure information, and (2) calling the Information Bank to ensure all relevant information was disclosed on the Buyers Guide. The Information Bank would act as a "check" to ensure dealers are making appropriate disclosure on the Buyers Guide. In addition, all prospective purchasers of a vehicle would be able to determine material facts about a vehicle before they make a purchase decision, rather than at the actual point of retail sale.

This disclosure method would even make information regarding the history of a reacquired vehicle available to prospective purchasers outside the direct purchase chain in situations where a dealer purchasing a vehicle at auction subsequently wholesales the vehicle. As comprehensive as Ford's disclosure system is -- and we believe it is the best in the industry -- we recognize that from time to time our dealers will wholesale a reacquired vehicle when the dealer has been unable to sell it at retail. This occurs with respect to a very small percentage of reacquired vehicles. Once the vehicles are out of our dealers' hands, we no longer can monitor disclosure. The information contained in the Information Bank would also be available to a second, third, or fourth retail purchaser. The current disclosure process would not provide this information to subsequent retail purchasers.

Ford's proposed method of ensuring disclosure would also be cost effective. Since the Commission is already enforcing compliance with the Used Motor Vehicle Trade Regulation Rule, there would only be incremental costs of enforcement. As all used car dealers currently are familiar with the Buyers Guide and are required to comply with the Rule, implementation and training costs would be minimized at the dealer level. This procedure would also reduce the substantial compliance costs incurred by some manufacturers from follow-up programs such as Ford's "recontact program" which is described later on.

Ford's historical and current disclosure practices and policies demonstrate that even when manufacturers, such as Ford, go beyond state law requirements in order to come as close as possible to a guarantee of effective disclosure, pre-sale disclosure may not occur in every instance. Preemptive federal legislation or regulation such as Ford's proposal are necessary to ensure relevant information regarding a reacquired vehicle is disclosed to a prospective purchaser prior to sale.

#### **Ford's Historical and Current Disclosure Practices and Policies**

Ford has been a leader in the disclosure area since 1988 when states began to amend their lemon laws to require disclosure to subsequent purchasers. Manufacturers were faced with a choice: disclose, or sell buybacks in other states. Ford formed a task force to determine how, and under what circumstances, Ford would provide disclosure of its repurchased cars and trucks. Ford made a customer satisfaction decision it is proud of: disclose every buyback in every state, no matter what the reason for the buyback and regardless of whether state law mandated disclosure. Ford also decided to provide a 12 month/12,000 mile warranty for every buyback, even for vehicles bought back for goodwill purposes. (A copy of the warranty statement is Attachment 1.)

Thus, at a time when the easiest solution was to resell buybacks in any of the dozens of states not requiring disclosure, Ford implemented a nationwide disclosure policy and provided a 12 month/12,000 mile warranty in every case. Under this policy, Ford discloses the buyback status of vehicles to purchasing dealers and requires those dealers to make disclosure of this fact to their customers. Since Ford does not sell vehicles directly to customers and is not present at the time of retail sale, Ford must rely on dealers to pass on the disclosure to retail customers. Attachment 2 is a copy of Ford's disclosure form, and Attachment 3 is the letter announcing this national program to all Ford and Lincoln-Mercury dealers.

Later, to put more "teeth" into the process Ford amended this form to state that the dealer's purchase of the buyback vehicle constituted its agreement to indemnify Ford from any cost or liability arising from the dealer's failure to disclose the status of the buyback. (See center of Disclosure Form, included as Attachment 4. Instructions accompanying the Disclosure Form are included as Attachment 5.)

Ford pays its Ford and Lincoln-Mercury dealers \$400 to administer a buyback from a customer. In 1994, Ford began paying dealers an additional \$300 just for living up to their obligation to make disclosure. Although Ford is not involved in the retail sale transaction between a dealer and retail purchaser, Ford believed higher compliance could be achieved by dealers if dealers were paid an added bonus for fulfilling their obligation to disclose to purchasers. We pay this bonus to all of our dealers, even though some states still do not require disclosure. (See Attachment 6 for a letter to a particular dealer spelling out its eligibility for bonus payments for disclosing the status of the buybacks it sells to its customers.)

Along with Ford's announcement to dealers that they would receive a bonus for making proper disclosure of buybacks, Ford informed them in an all-dealer letter that penalties, such as loss of auction privileges, would be imposed for failure to make disclosure. (See Attachment 7.)

In 1995, Ford announced to dealers a "recontact program". Under this program Ford contacts the dealer's customer and makes disclosure if the dealer did not. As one would imagine, accomplishing this goal comes at great cost to Ford. Significant cost is

incurred in paying a supplier to monitor the buyback process to determine whether the dealer has made disclosure to his customer. For a description of the procedure that is followed, see the all-dealer letter (Attachment 8) and the procedures provided to Ford field personnel (Attachment 9.)

Ford is presently developing procedures that would help ensure disclosure at the time a potential customer examines a vehicle. First, Ford is planning to affix a notice, to be removed only by the retail purchaser, on the driver's side rear window disclosing the buyback status (Attachment 10). Second, Ford is planning to affix permanently a sticker in the door jamb directly below the Vehicle Identification Number plate (Attachment 11). No law (with the exception of California which requires a sticker) requires these measures but, again, we plan to proceed with them later this year in order to be certain that we have taken every action available to provide notice to the retail purchaser.

Ford has gone beyond state law requirements to try to assure that all purchasers of a reacquired vehicle receive notice of the fact that a vehicle had been repurchased by Ford. Even with all the procedures Ford has instituted, in some instances a purchaser may not receive disclosure prior to retail sale. Adoption of Ford's proposal via federal preemptive legislation or regulation would ensure that all prospective purchasers of a reacquired vehicle would have access to the history of a vehicle prior to making a purchase decision.

In Ford's discussion above, Ford has addressed Questions 6 and 7 of the Request for Comment. Below are Ford's comments on several other of the issues discussed in the Petition and Request for Comment.

### **Uniformity of Disclosure and Labeling Requirements (Question 1 and 10)**

The FTC has requested comments regarding whether uniform disclosure and labeling requirements would resolve the problems of interstate shipment of vehicles to avoid individual state requirements, and also seeks specific information regarding the interstate sale and disposition of vehicles.

#### *(A) "Lemon Laundering" Allegation*

The petitioners allege the industry has a practice of reselling vehicles repurchased due to defects without disclosure of the vehicle's prior history to the subsequent purchaser. The petitioners' allegation that the industry repurchases vehicles and then ships these buybacks across state lines to avoid disclosure of the buyback status of these vehicles ("lemon laundering") is totally unfounded in relation to Ford's policies, practices, and procedures. Ford does not transport vehicles to another state for resale to avoid disclosing the fact the vehicle is a buyback. As discussed in part 1 above, Ford has instituted a nationwide policy that requires disclosure of the fact that a vehicle has been repurchased by Ford, the reason for the buyback, and the action taken to correct reported problems. Ford requires the purchasing dealer to disclose these facts to the dealer's retail purchaser, without exception. Therefore, a consumer that purchases a vehicle bought back by Ford should receive the same disclosure of these facts, regardless of the state in which the vehicle was repurchased or resold.

In order to institute tight controls over the resale process of these vehicles and to ensure the required disclosures are made in every case, Ford repairs buyback vehicles and sends them to a Ford-sponsored auction for resale. Because auctions are not established in all states, buybacks may cross state lines before being sold to dealers. Once at auction, any dealer attending the auction, whether from the same state, a neighboring state, or a state far removed from the auction site may purchase the vehicles available for sale. In each and every case, however, Ford discloses to the purchasing dealer the fact that the vehicle has been reacquired and obtains the dealer's agreement to disclose this fact to the retail purchaser. The state in which the vehicle is ultimately resold should not have an impact upon whether the disclosure is received by the retail customer.

Indeed, for all vehicles repurchased by Ford after January 1, 1994, Ford has actually made disclosure to the retail customer where the selling dealer has not. Although this "customer recontact program" is clearly beyond what is required from Ford under any state law, Ford's adoption of this policy is a clear indication that Ford is not attempting to avoid disclosure responsibility by shipping vehicles over state lines but, rather, is aggressively working to ensure maximum disclosure.

Based on Ford's policies and procedures, both past and present, the petitioners' allegation that somehow Ford is involved in a scheme of "lemon laundering" by moving vehicles across state lines to avoid disclosure is completely unfounded. Ford's policies regarding 1) full disclosure to dealers, 2) the dealers' obligation to disclose to every retail customer, and 3) recontacting every customer that did not receive disclosure from the selling dealer apply in every case, no matter where the vehicle was repurchased or resold and no matter why the vehicle was repurchased.

As discussed above, however, Ford strongly believes that the current scheme of state requirements applicable to the resale and disclosure of reacquired vehicles is not effective to ensure that a customer receives disclosure prior to retail sale. In order for every customer to receive such disclosure, federal preemptive legislation must be adopted such as the disclosure mechanism proposed by Ford as described above.

### *(B) Disposition of Buyback Vehicles*

Approximately ninety five percent of vehicles repurchased by Ford are repaired and resold to dealers at auction. The remaining five percent of vehicles are scrapped, or donated for use by technical repair schools.

### *(C) Uniformity of Requirements*

In order to ensure that consumers receive notification of the fact that a vehicle has been repurchased by a manufacturer, preemptive federal legislation or regulation should be adopted to ensure manufacturers, dealers, consumers and regulators can focus on one procedure to reduce complexity and to ensure consistency of disclosure. Under the current statutory schemes, manufacturers must comply with a complex web of requirements which include: individual state disclosure requirements, a variety of state-created disclosure forms, and numerous title branding procedures which vary from state to state. Manufacturers have been required to develop and institute procedures for compliance on a state-by-state basis.

Ford believes federal preemptive legislation is necessary to ensure customers receive disclosure prior to purchase of a reacquired vehicle.

### **Which Vehicles should be Considered "Buybacks" for Disclosure Purposes (Question 3 and 4)**

Questions 3 and 4 of the Request for Comment address the issue of which vehicles should be considered "buybacks" for disclosure purposes and seek to determine how manufacturers will adjust their buyback policies as a result of such a determination. As discussed in 1 above, since 1988 Ford has been disclosing to its dealers, and requiring dealers to disclose to consumers, the fact that a vehicle has been repurchased by Ford. This disclosure is made for each and every vehicle repurchased by Ford; no distinction is made between "goodwill" and "lemon law" vehicles.

A decision to require disclosure for vehicles repurchased prior to the initiation of arbitration or litigation would not have a chilling effect on Ford's willingness to repurchase vehicles. Manufacturers compete vigorously to maintain customer satisfaction, and a decision not to repurchase vehicles in order to avoid a disclosure requirement would significantly impede a manufacturer's ability to satisfy customers. Moreover, since Ford currently makes disclosure for such repurchased vehicles, adoption of such a standard would not have an impact on Ford's policies regarding the repurchase of these vehicles.

A decision to only require disclosure of the buyback status of vehicles that were repurchased pursuant to formal arbitration or litigation would not cause Ford to buy back vehicles earlier in the process to avoid the disclosure requirement. As previously stated, for each vehicle Ford repurchases, Ford discloses to the purchasing dealer and requires the dealer to disclose to its retail customer the fact that a vehicle has been repurchased, the reason for the repurchase, and the repairs performed to the vehicle.

Ford's willingness to buyback vehicles, however, is chilled by the intricate and conflicting web of state disclosure requirements. Taken together, these requirements are unnecessarily burdensome and difficult to administer. In effect, manufacturers are required to implement procedures to comply with over thirty state disclosure requirements. Manufacturer resources which could be better utilized to proactively assist customers must be spent in administering compliance with these laws. Clearly, it would be in the best interests of all concerned-- manufacturers, dealers, customers, and regulators-- to develop one clear, simple disclosure process to be applied to vehicle buybacks regardless where repurchased or resold. Manufacturers and dealers would be able to focus all their resources on one process, rather than over thirty; customers would be assured that they were receiving the same protection as all other consumers across the country; and enforcers would be able to monitor one process to ensure compliance, rather

than the numerous, and often conflicting, processes required today. Additionally, a uniform disclosure process would recognize that affected vehicles often cross state lines.

Ford believes strongly that federal preemptive legislation or regulation is necessary to ensure purchasers receive disclosure prior to the retail sale of reacquired vehicles.

### **Number of Vehicles Repurchased Annually (Question 1)**

The FTC has requested specific data regarding the number of vehicles repurchased each year by manufacturers. The repurchase of a vehicle from an owner is a tool used by manufacturers to maintain customer satisfaction and to retain owners. It is widely accepted in the industry that it is seven times more difficult to gain a new customer than to retain a current one. Therefore, manufacturers compete vigorously regarding all methods of customer satisfaction, including the rate and method of repurchasing vehicles from their customers. The number of vehicles repurchased by Ford is treated as confidential, proprietary information which is not made available outside Ford Motor Company.

Ford does not have knowledge regarding the number of vehicles repurchased by dealers without Ford's involvement. Motor vehicle dealers are independent businesses that do not report to Ford the number of vehicles they repurchase, if any.

### **Success of Repairing Repurchased Vehicles (Question 2)**

Question 2 requests comments regarding the number of vehicles successfully repaired after being repurchased from a customer. Ford repurchases vehicles from consumers for a variety of reasons, many for purely customer satisfaction purposes. For example, a customer may dislike characteristics of a vehicle that other owners find completely acceptable. In these cases, there is no condition to repair: the vehicle performs as intended by the manufacturer and it fully meets the specifications for the vehicle. In cases where repair is necessary, Ford does not have data indicating the number of vehicles that are "successfully repaired" as it is our intention to do everything possible to "successfully repair" each vehicle. However, one indication of the number of vehicles that were not successfully repaired is the number of vehicles repurchased for a second time by Ford -- less than one half of one percent of all our buybacks.

Each reacquired vehicle resold by Ford is backed by a 12 month/12,000 mile warranty to reflect Ford's confidence in the repairs addressing the particular concern giving rise to the buyback. In addition, even though most state lemon laws only require a warranty covering the condition resulting in the buyback, Ford has elected to provide a comprehensive warranty to indicate our willingness to stand behind the quality of these vehicles. Ford provides this comprehensive warranty to the purchasers of all buyback vehicles, including all vehicles repurchased for customer satisfaction purposes.

### **Conclusion**

Ford believes that preemptive, federal legislation or regulation is necessary to ensure that consumers receive disclosure of the history of a reacquired vehicle prior to retail sale of the vehicle. Uniform legislation would simplify compliance for manufacturers and dealers, would ensure consumers have access to the history of a vehicle prior to purchase, and would require enforcers monitor only one process.

Ford appreciates the opportunity to comment on issues relating to disclosure in the resale of vehicles repurchased by manufacturers, and to dispel the allegations stated in the petition that Ford is engaged in any sort of "lemon laundering." Ford makes every effort to comply with the various state laws regarding disclosure; in fact, Ford has made great efforts to go far beyond statutory requirements to try to come as close as possible to a guarantee of effective disclosure. Without federal preemptive disclosure laws, however, some consumers may continue to purchase reacquired vehicles without receiving pre-sale notice of the history of the vehicle.