

**TITLE 765. OKLAHOMA USED MOTOR VEHICLE DISMANTLER, AND
MANUFACTURED HOUSING COMMISSION
CHAPTER 16. ADVERTISING**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions

765:16-1-1 [AMENDED]

765:16-1-2 [AMENDED]

Subchapter 3. Specific Advertising Regulations

765:16-3-6 [AMENDED]

Subchapter 5. Finding of Violation

765:16-5-1 [AMENDED]

765:16-5-2 [AMENDED]

SUMMARY:

The proposed rules amendments change the present Rules to conform to HB 3271, modifying the agency name to Oklahoma Used Motor, Dismantler, and Manufactured Housing Commission, and clarifies dealer price advertising.

AUTHORITY:

Oklahoma Used Motor Vehicle, Dismantler, and Manufactured Housing Commission;

47 O.S. Section 582(E)(1);

75 O.S. Section 583 B.3.;

75 O.S. Section 302 et.seq

COMMENT PERIOD:

Persons wishing to present their views regarding this action may do so by delivering or mailing their written comments to the Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421 NW 13th, Suite 330, Oklahoma City, Oklahoma 73103, by February 17th, 2023.

PUBLIC HEARING:

The public hearing will be held on Tuesday, March 14th, 2023, at 10:30 AM, at the office of the Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421 NW 13th, Suite 100, Oklahoma City, Oklahoma.

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

The Used Motor Vehicle Dismantler, and Manufactured Housing Commission requests that business entities affected by these proposed rules provide the Commission, within the comment period, in dollar amounts, if possible, the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing to John W. Maile, at the above address, before the close of the comment period on February 17th, 2023.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained for review at the office of the Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421 NW 13th, Suite 330, Oklahoma City, Oklahoma.

RULE IMPACT STATEMENT:

A rule impact statement will be prepared and be available after February 1st, 2023, at the office of the Used Motor Vehicle Dismantler, and Manufactured Housing Commission.

CONTACT PERSON:

John W. Maile, Director, Used Motor Vehicle Dismantler, and Manufactured Housing Commission, 421, NW 13th, Suite 330, Oklahoma City, Oklahoma 73103 (405)521-3600.

CHAPTER 16. ADVERTISING

SUBCHAPTER 1. GENERAL PROVISIONS

765:16-1-1. Purpose

The purpose of this Chapter is to implement the intent of the legislature as declared in the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission Law by regulating the advertising of the Commission licensees by requiring truthful and accurate advertising practices for the benefit of the citizens of this State. These rules apply to all licensees engaging in business under any of the industries regulated by this Commission, unless the rule is directed toward a specific industry or practice only engaged in by that specific industry licensee.

765:16-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

'Advertisement' means an oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio or on television or on the Internet.

'Bait advertisement' means an alluring but insincere offer to sell a product but which has as its primary purpose of obtaining leads of persons interested in buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

'Clear and conspicuous' means that the statement, representation, or disclosure is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. This standard shall be met by the following:

(1) In print advertisement:

(A) The type size of 5 ½ caps or larger shall be used in all disclosures.

(B) Disclosures shall be located adjacent to the price or in an area clearly marked with reference symbols. All reference symbol marks, such as asterisks, must be type size 5 ½ caps or larger.

(2) In an audio advertisement:

(A) The disclosure shall be clear and understandable in pace and volume; and,

(B) The disclosure shall be placed at the end of the advertisement.

(3) In a television advertisement:

(A) The disclosure shall be in visual form so that the average viewer may easily read and understand it.

(B) The disclosure size shall be at least twenty (20) scan lines and each disclosure shall appear continuously on the screen for at least ten (10) seconds.

'Demonstrator' means those vehicles that are of the current or previous model year which have not been sold, titled, or registered to any type of purchaser and are used by dealership personnel for demonstration purposes. Service vehicles, courtesy cars, daily rentals, loners, driver education and factory executive cars shall not be described as "demonstrator" vehicles. Demonstrators may be advertised for sale, as such, only by a franchised dealer of the same line-make of vehicle.

'Disclosure' means required information that is clear, conspicuous, and accurate.

'Factory Executive/Official Vehicle' means a new motor vehicle with an original Manufacturer's Statement of Origin or used motor vehicle with a Certificate of Title, that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries. The advertiser shall state clearly whether the vehicle is a new or used vehicle.

'Licensee' means any person required to obtain a license from the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission.

'Program vehicle' means a vehicle that is purchased at a manufacturer's closed auction or sold by or directly from the manufacturer or distributor which is a current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

'Rebate or cash back' means a sum of money refunded to a purchaser or for the benefit of the purchaser. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for his or her benefit.

SUBCHAPTER 3. SPECIFIC ADVERTISING REGULATIONS

765:16-3-1. General prohibitions

A licensee shall not use false or misleading advertising.

765:16-3-2. Availability of vehicles

(a) **Specific advertising.** A licensee may advertise a specific vehicle for sale if:

(1) the specific vehicle is in the possession of the licensee at the time the advertisement is placed, or the vehicle may be obtained from the manufacturer or distributor or some other source, and this information is disclosed in the advertisement; and,

(2) the advertisement sets forth the number of vehicles available if the dealer does not have a supply of the advertised vehicles available to satisfy a reasonable expectable public demand. If an advertisement pertains to only one specific vehicle, then the advertisement must disclose that vehicle's stock number.

(b) **General advertising.** This section does not prohibit general advertising of vehicles by a manufacturer, dealer advertising association, or distributor, and the inclusion of the names and addresses of the dealers selling such vehicles in the particular area.

765:16-3-3. Accuracy

All advertised statements shall be accurate, clear and conspicuous.

765:16-3-4. Bait advertisement

Any advertising of a "Bait" or "Bait and Switch" nature is prohibited.

765:16-3-5. Layout

The layout, headlines, illustrations, or type size of a printed advertisement and the broadcast words or pictures of radio/TV advertisements shall not convey or permit an erroneous or misleading impression as to which vehicle or vehicles are offered at featured prices. No advertised offer, expression, or display of price, terms, down payment, trade-in allowance, cash difference, savings, or other such material terms shall be misleading and any necessary qualifications shall be clearly, conspicuously, and accurately set forth to prevent any misunderstandings.

765:16-3-6. Dealer price advertising

(a) **Selling price.** The most conspicuous price of a used motor vehicle, when advertised by a dealer, must be the full and total selling price for which the dealer will sell the vehicle. An advertisement may not list only a down payment price in lieu of the full price of the vehicle. The only charges that may be excluded from the advertised price are:

- (1) state and local taxes,
- (2) license,
- (3) title, and
- (4) processing fee.

(b) **Qualification.** A qualification may not be used when advertising the cash price of a vehicle such as "with trade", "with acceptable credit", "with dealer-arranged financing", or "with down payment".

(c) **Rebate or savings claim.** If a price advertisement discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

765:16-3-7. Identification

(a) when the price, payment or savings claim of a vehicle is advertised, the following must be disclosed:

- (1) model year;
- (2) make;
- (3) trade, brand or style name; and
- (4) if other than a new vehicle, the vehicle must be identified as a used, demonstrator, factory executive/official vehicle, or a program vehicle.

(b) An illustration of a motor vehicle used in an advertisement must be that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available then the dealer must clearly and conspicuously disclose the difference between the illustration and the vehicle being advertised.

765:16-3-8. Auction

Terms such as "auction" or "auction special" and other terms of similar import shall be used only in connection with a vehicle offered or sold at bona fide auction.

765:16-3-9. Lease advertisements

Vehicle lease advertisements shall clearly and conspicuously disclose that the advertisement is for the lease of a vehicle. Statements such as "alternative financial plan", "drive away for \$_____ per month", or other terms or phrases that do not use the term "lease", do not constitute adequate disclosure of a lease. Lease terms that are not available to the general public shall not be included in advertisements directed at the general public. All limitations and qualifications applicable to the lease terms advertised shall be clearly and conspicuously disclosed as per Federal Trade Commission Regulation "M".

765:16-3-10. Payment disclosure

All payment advertising shall be in compliance with Federal Trade Commission Regulations "M"(Lease Regulation) and "Z" (Truth in Lending act).

765:16-3-11. Prohibited statements

The following statements are presumptively false and misleading, and the burden of proving otherwise shall be on the advertiser/licensee:

- (1) Statements such as 'write your own deal', 'name your own price', 'name your own monthly payment', or statements with similar meaning.
- (2) Statements such as 'everybody financed', 'no credit rejected', 'guaranteed approval', you are 'pre-approved', and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.
- (3) Statements representing that no other dealer grants allowances for trade-ins, however stated, unless such is the case.
- (4) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer, unless such is the case.
- (5) No merchandise or enticement may be described as 'free' if the vehicle can be purchased for a lesser price without the merchandise or enticement, or if the price of the vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement. The advertisement shall clearly and conspicuously disclose the conditions under which the 'free' offer may be obtained.
- (6) The term "dealer's cost", or other reference to the cost of the vehicle to the dealer shall not be used.
- (7) No trade-in amount or range of amounts shall be advertised.
- (8) A used vehicle shall not be advertised in any manner that creates the impression it is new.
- (9) The use of the terms 'liquidation', 'going out of business', or statements with similar meaning, are prohibited unless a dealer is actually going out of business and ceasing its operations at the licensed location. If a dealer is going out of business, these terms may only be advertised during the period between the execution of a buy-sell agreement with the proposed buyer and the actual effective date of the sale.
- (10) An offer of a buy down rate is prohibited without the appropriate disclaimer: 'This is a buy down rate. The amount of the buy down may affect the price of the

vehicle.'

(11) Terminology such as 'we pay off your trade no matter how much you owe' or statements with similar meaning shall not be used, unless accompanied by a disclaimer indicating that pay off is dependent upon approved credit.

765:16-3-12. Dealership name

All advertisements must conspicuously display the licensed name of the used motor vehicle dealership.

SUBCHAPTER 5. FINDING OF VIOLATION

765:16-5-1. Violation

The violation of an advertising rule shall be considered by the Commission as a violation of the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission Law, created by Title 47 of Oklahoma State Statute. In addition to the specific advertising regulations, referenced in Subchapter 3, any other advertising or advertising practices found by the Commission to be false or misleading shall be deemed violations of the law, and shall also be considered violations of the general prohibition.

765:16-5-2. Hearing Penalty

No licensee shall be held to be in violation of the foregoing rules of this Chapter ~~including the general prohibition in OAC 765:16-3-1~~, except upon a finding thereof made by the Commission ~~after notice and hearing~~ as provided in the Oklahoma Used Motor Vehicle, Dismantler, and Parts Manufactured Housing Commission Law.