



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, Virginia 22102
703/821-7040 • 703/821-7041

Legal & Regulatory Group

March 13, 2013

SUBMITTED ELECTRONICALLY

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex T)
600 Pennsylvania Avenue, N.W., Washington, D.C. 20580
Electronic address: <https://ftcpublic.commentworks.com/ftc/usedcarrulenprm/>

Re: “Used Car Rule Regulatory Review, Matter No. P087604”

The National Automobile Dealers Association (“NADA”) submits the following comments to the Federal Trade Commission (“FTC” or the “Commission”) regarding its notice of proposed rulemaking (“NPR”) in connection with its Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”) and the Rule’s Buyers Guide (“Guide”).

I) BACKGROUND

a) Periodic Regulatory Review

In 2008, the FTC issued a notice as part of a periodic regulatory review of the Rule. In the notice, the FTC sought comment on “a range of issues” focusing on two specific questions: “whether a bilingual Buyers Guide would be useful or practicable,” and whether changes should be made “to the Buyer’s Guide [to] reflect the various types of [certified and other] warranties potentially available today.”¹

NADA submitted comments which addressed the two questions specifically posed by the Commission and the proposed amendments to the Guide, as well as several issues raised by other commenters.

¹ July 16, 2008 news release announcing approval of Federal Register Notice on Regulatory Review of Used Car Rule: <http://www.ftc.gov/opa/2008/07/ucr.shtm>.

After a thorough and lengthy review and analysis of the issues and comments received, the FTC has concluded that the Rule continues to benefit consumers and will be retained. Last December, a notice was issued in which the Commission asked for comment on several potential revisions to the Rule that would:

- (1) Add a statement to the Buyers Guide encouraging consumers to seek vehicle history information and directing consumers to an FTC website for more information about vehicle histories;
- (2) Add a statement in Spanish to the Buyers Guide directing Spanish-speaking consumers to ask for a copy in Spanish, if they desire;
- (3) Add catalytic converters and airbags to the List of Systems on the back of the Buyers Guide;
- (4) Place boxes on the back of the Buyers Guide where dealers will have the option to indicate whether
 - (a) The manufacturer's warranty still applies;
 - (b) the manufacturer's used vehicle warranty, such as a manufacturer's certified used car warranty, applies; or
 - (c) Some other used vehicle warranty applies.

a) Retention of the Rule and the Proposed Revisions

i) Retention of the Rule is Appropriate

We agree with the FTC that retention of the Used Car Rule is appropriate. The Rule and the Buyers Guide continue to serve an important role by providing this information through clear, effective, and meaningful disclosures, which allow consumers to compare dealer warranty coverage as part of their used car purchase decision-making process. Dealers and consumers alike will benefit from the continuation of the Rule.

ii) Revisions to the Buyers Guide

NADA also agrees in large part with the majority of the proposed revisions to the Buyers Guide.

(1) "Non-Dealer Warranty" Disclosure

As we noted in our initial comments, the rise in prevalence and popularity of "certified" programs has made the current disclosures in the Buyers Guide inadequate in many instances, which is a disservice to dealers and consumers alike. In short, there is currently no way for a dealer to disclose a "certified" or other non-dealer warranty. The addition of the optional "Non-Dealer Warranty" and related check boxes will make warranty disclosure clearer and more helpful to used vehicle shoppers. While we understand the need to allow enough space for the

information on the first page of the Proposed Guide to be presented in a clear and conspicuous manner, we would suggest that if at all possible within the physical space constraints of one page, the Commission consider re-organizing the information to allow placement of the “Non-Dealer Warranty” disclosure boxes, along with the Service Contract box, on the front of the Guide rather than the back, thus allowing this valuable information to be more adequately presented to consumers.

(2) Pre-purchase Inspection Disclosure / Direction to the FTC Website

The current Buyers Guide states, in bold, all caps:

“PRE PURCHASE INSPECTION: ASK THE DEALER IF YOU MAY HAVE THIS VEHICLE INSPECTED BY YOUR MECHANIC EITHER ON OR OFF THE LOT.”

The proposed Guide states (*italics added*):

“Before you buy this vehicle:

- 1. “Get information about its [the used vehicle you are contemplating purchasing] history. Visit the Federal Trade Commission at ftc.gov/usedcars. You will need the vehicle identification number (VIN), shown above, to make the best use of the resources on this site.”*
- 2. Ask the dealer if your mechanic can inspect the vehicle on or off the lot.”*

We have several concerns with this proposed language.

As a preliminary matter, we believe the Commission’s overall analysis of the Rule, the Guide, their purposes and many of the proposed changes is well-reasoned. However, in the context of the proposed vehicle history statement (item #1 above), we believe that the assertion that “two principal purposes of the Rule” include “(1) Providing consumers with important pre-sale information about a vehicle they may purchase, and (2) diminishing the degree to which consumers must solely rely upon the selling dealer for information when they are shopping for cars” is far more broadly stated than provided for under the Rule.² Instead, the Guide’s purpose is to provide *dealer warranty* information to consumers prior to the sale, and to *memorialize dealer warranty representations in writing* rather than relying on oral promises made by the dealer. Indeed, it is far more accurate to state, as the Commission does elsewhere that “the Buyers Guide’s primary purpose is to create readily understandable disclosure of the warranty coverage offered by a used car dealer.”³

To that end, a serious question exists whether the Rule allows for the inclusion of the proposed vehicle history statement. However, if the Commission decides to refer to the FTC website in the Guide, we believe that any such website should be limited to educational materials and should not endorse, link to, or otherwise imply the legitimacy of, any particular vehicle history company, report, or service.

² 77 Fed. Reg. 74755-6.

³ *Id.* at 74750.

For example, while general information about title brands, title “washing,” or other issues related to vehicle history would be appropriate, any reference to specific commercial providers would not. As outlined in detail in our previous comments, and those of other commenters, vehicle history reports present some information likely to be of value to consumers as long as they understand the limitations of that data. The risk is that some consumers may gain a false sense of security from any such report, especially if those reports have the FTC’s governmental imprimatur placed upon them.

Indeed, to the extent vehicle history services are mentioned or alluded to at all, we believe the FTC should include a disclaimer fully explaining the limitations of such services, the potential for inaccurate or outdated results, and the limited degree to which consumers should rely on any such report. The disclaimer should also note that the data is provided by independent third parties, and is not endorsed, or certified as accurate by the FTC or any other governmental entity. While the details of what will be on this site are yet to be determined, the inclusion of the language “[y]ou will need the vehicle identification number (VIN), shown above, to make the best use of the resources on this site” suggests at least, that the Commission is contemplating linking to, referring to, or otherwise making vehicle history reports available to consumers. NADA believes that would be a mistake.

Also, as noted in our previous comments, “a significant and growing number of dealers already offer Carfax, Autocheck, or similar reports with all the used cars they sell at retail. These reports are gaining wide acceptance with the used car buying public, and in many markets, it is quickly becoming a standard part of many transactions.” This market reality has not changed. As a result, any information provided by the FTC should make it clear that a consumer need not pay for an additional vehicle history report if one has already been provided by the dealer. Consumers are, of course, free to do so, but we believe it would be a disservice to consumers to imply that they can get different or “better” information by paying for it through the FTC’s website rather than relying on the third party report supplied by (and already paid for by) the dealer.

Next, we are concerned that the admonition “[b]efore you buy this used vehicle:” is too strong and implies that the two items listed are somehow required of a prospective used car purchaser. We certainly understand (and agree with) the idea behind this language – that a used car shopper should consider taking these steps prior to purchasing the used vehicle. However, this directive may lead to consumer confusion about exactly what this means, what role the FTC has in this process, whether the FTC is endorsing any such vehicle history service, etc.

Perhaps the most significant flaw with the proposed language in our view is the relatively lower profile of the important guidance to prospective purchasers regarding pre-purchase inspections. A consumer is best served by purchasing a used vehicle from a franchised new car dealer they know and trust. However, in any used vehicle purchase, (and in particular if no such trusted option is available), the best advice they can get is to inquire about an independent inspection of that vehicle. The Commission notes that the pre-purchase inspection disclosure language is one of the two fundamental ways that the Rule “attempts to protect consumers from

potential post-purchase problems.”⁴ This good advice will be less effective if presented in less prominent font and placed as a second item in a list. While vehicle history information may be relevant to some purchasers, we believe that an independent mechanic’s review of the actual vehicle is far more likely to provide consumers with relevant, reliable, and useful information. The reduced prominence of this guidance will not, in our estimation, aid consumers.

We would propose the following restructuring of the proposed language:

“PRE PURCHASE INFORMATION: (1) ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT. (2) CONSIDER GETTING INFORMATION ABOUT THIS VEHICLE’S HISTORY: VISIT www.ftc.gov/usedcars TO LEARN MORE.”

II) CONCLUSION

As the Commission has noted, “[t]he FTC’s Used Car Rule gives consumers critical information about who will pay for repairs when something goes wrong, and that’s key to avoiding consumer confusion and dissatisfaction.”⁵ All reputable dealers want satisfied customers, and they know that the key to satisfaction is an educated consumer. Dealers and consumers alike benefit when consumers are educated about the vehicle they are purchasing.

NADA appreciates the FTC’s consideration of these Comments, and of the Commission’s lengthy and thorough review of the issues presented by the Rule and the Guide. The proposed revisions to the Guide represent an improvement for dealers and consumers by allowing more complete and accurate disclosure of warranty coverage. Please feel free to contact us if we can provide additional information that would be useful in your inquiry going forward.

Sincerely,

/s/

Bradley T. Miller

Associate Director, Legal and Regulatory Affairs

⁴ See NPR, 77 Fed. Reg. 74747 (along with disclosure of dealer warranties, if any).

⁵ FTC Bureau of Consumer Protection Director Jodie Bernstein, Dec. 4, 1995, 9/18/08 at <http://www.ftc.gov/opa/1995/test/12/uc2.shtm>.