

March 17, 2015

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW.,
Suite CC-5610 (Annex A)
Washington, DC 20580

And

Federal Trade Commission
Office of the Secretary
Constitution Center
400 7th Street SW., 5th Floor
Suite 5610 (Annex A),
Washington, DC 20024

And

John C. Hallerud
Attorney, Midwest Region
Federal Trade Commission
55 West Monroe Street, Suite 1825
Chicago, IL 60603

Re: Used Car Rule Regulatory Review, 16 CFR part 455, Project No. P087604

Dear Mr. Hallerud and FTC Desk Officer:

On behalf of CARFAX, Inc., an IHS, Inc. subsidiary, ("CARFAX"), this letter provides comments to the Federal Trade Commission ("FTC") responsive to the supplemental notice of proposed rulemaking ("SNPRM") regarding changes to the Used Motor Vehicle Trade Regulation Rule ("Rule" or "Used Car Rule") dated November 28, 2014. CARFAX offers vehicle history reports ("VHRs") to North American used car buyers and sellers, insurers, automobile manufacturers and local/state/federal government and law enforcement agencies among others, and is the pioneer of VHRs. The Used Car Rule requires dealers to post a Buyers Guide in every used car they offer for sale containing warranty and other information. In December 2012, the FTC issued a Notice of Proposed Rulemaking ("NPRM") setting forth proposed changes to the FTC's Used Car Rule. In the NPRM, the FTC proposed adding a statement to the Buyers Guide advising consumers about the availability of VHRs and directing consumers to an FTC Web site for more information about VHRs. After reviewing comments received pursuant to the NPRM, the FTC, instead of adopting any final amendments to its Used Car Rule issued the SNPRM seeking comments on additional modifications to its proposal made in the NPRM and on alternate proposals. The comments in this letter only address the FTC's proposal to mandate that dealers indicate on the Buyers Guide whether they obtained a VHR, and, if so, to provide a copy of the VHRs to consumers who request it. This comment does not address FTC's proposal regarding changes to the warranty information provided on the Buyers Guide.

CARFAX does not believe that the inclusion of any vehicle history information on the Buyers Guide is necessary at this time. Since the promulgation of the Used Car Rule, a number of commercial

entities with national coverage, such as CARFAX and Autocheck now provide VHRs for used vehicles, which may include a wealth of information about brands, total loss, prior accidents and/or damage, airbag deployments, open recalls, odometer readings, and even maintenance history. In addition, NMVTIS (a Federal government mandated program) currently only provides limited information about brands and total loss and does not include information from all 50 states. Dealers already obtain VHRs from commercial providers and share them with consumers. Commercial VHRs are used by over tens of thousands of dealers and viewed by millions of consumers each year. As the FTC acknowledges:

- *“Since the Rule’s promulgation in 1984, a variety of public and private sources offering information about the history of individual vehicles have become available. When the Rule was adopted, vehicle history information was available primarily from prior owners of used cars or from state car titling agencies like a state department of motor vehicles (“DMV”). For cars titled in several states, that information sometimes was difficult both for consumers and dealers to obtain. Today consumers can obtain useful title information from NMVTIS, and commercial services offer that in combination with vehicle history information from a variety of sources.”¹*

The vast majority of the VHRs created by the commercial entities are available at no cost to used car consumers through dealers own websites, manufacturer certified preowned vehicle websites and are readily available on used car listings sites such as www.carfax.com, www.Cars.com, www.Autotrader.com, www.Ebaymotors.com, etc. All of these entities have national advertising campaigns directing consumers to their websites to view used car listings and promote the availability of free VHRs. CARFAX, in particular, has promoted the need to obtain a VHR through national advertising since 2000. Finally, disclosure to used car buyers of title brands, total loss, salvage, and other such designations is already required by law and highly regulated.

Further, the move to online presence has dominated the used car buying process for the past twenty years and has seen accelerated growth in the past five years, with expected growing momentum into the future. Global consulting firm McKinsey & Company (“McKinsey”), in a November 2012 study, describes a “consumer decision journey” (CDJ) for a vehicle purchase.² CDJ describes the way car buyers “move from an initial consideration to their final purchase”.³ McKinsey finds that through CDJ, “customers increasingly rely on digital channels . . . checking [manufacturer] Web sites, reading reviews, and visiting social networks and community forums in the consideration phase.”⁴ Further, “[i]n 2012, 70 percent of buyers stated the Internet as a major source for information gathering, displacing brochures, ads, and test reports”⁵ McKinsey’s 2013 Retail Innovation Consumer Survey shows “over 80 percent of new-car and almost 100 percent of used-car customers now begin their journey online”⁶ Finally, McKinsey has also found that the number of physical visits to dealerships by consumers during CDJ has fallen from five just a decade ago to an average of 1.6 today.⁷ McKinsey concludes that this is an important signal that “dealers have lost their role as the primary source of information as well as their power over the information shared and their ability to influence the customer.”⁸

¹ Federal Register Volume 77, Number 242 (Monday, December 17, 2012) [Proposed Rules] [Pages 74745-74774] From the Federal Register Online <http://www.gpo.gov/fdsys/pkg/FR-2012-12-17/html/2012-29920.htm> [FR Doc No: 2012-29920]

² Eight trends shaping digital marketing in the auto industry (November 2012) by Jan-Christoph Köstring – McKinsey Consulting http://www.mckinsey.com/client_service/marketing_and_sales/latest_thinking/eight_trends_shaping_digital_marketing_in_the_auto_industry.

³ Id.

⁴ Id.

⁵ The road to 2020 and beyond: What’s driving the global automotive industry? (August 2013, Advanced Industries – McKinsey Consulting), at 15.

⁶ Innovating automotive retail: Journey towards a customer-centric, multiformat sales and service network (February 2014, Advanced Industries – McKinsey Consulting), at 8.

⁷ “Dealers Challenged by Smartphone Car Buyers,” Greg Gardner, Detroit Free Press <http://www.freep.com/story/money/cars/2015/01/31/millennials-smartphone-carbuying/22617915/>

⁸ Innovating automotive retail Journey towards a customer-centric, multiformat sales and service network, at 8.

These statistics clearly show that the Buyers Guide window sticker on the physical vehicle is an after-thought for consumers today. Creating new mandates that require dealers to disclose vehicle history information through the Buyers Guide won't improve consumer choice or help protect consumers. There is no longer a need to alter the Buyers Guide to account for vehicle history. The move to the digital world has empowered used car consumers, with almost 100% beginning their journey online. This online journey includes access to millions of used cars listed for sale that have VHRs readily available, generally posted with the vehicle listing and generally at no cost to consumer. In addition, a significant number of used car shoppers now know that a VHR is an important tool, along with a mechanic's inspection and test drive, which one must ask for prior to purchasing a used car. CARFAX believes that to the extent there were any concerns in the past regarding the availability of vehicle history information to consumers of used cars, such concerns have been addressed by the marketplace. It is no longer necessary for the FTC to mandate that consumers be notified of the availability of VHRs through the Buyers Guide.

Moreover, such a mandate may create greater confusion in the marketplace.

- First, consumers are more educated about the used car buying process and have greater access than ever to vehicle history information. VHRs available online are often re-run each time the consumer accesses the VHR, updating the information available on the VHR. This reduces the likelihood that the consumer has to rely on possibly stale data available on a hardcopy of a VHR that was previously run and printed by the dealer. The FTC should allow the used car consumer to choose the best technology and system providing the greatest disclosure as the consumer deems appropriate. Consumers rarely visit dealerships until they have completed their research, including viewing VHRs.
- Second, by defining what would be deemed vehicle history information, the FTC could be stifling innovation and competition. Commercial VHR providers compete to provide more and more information to used car buyers. The information available on VHRs has grown over time. By defining the data elements that would be deemed vehicle history information, the FTC could be creating a disincentive for healthy competition between VHR providers to provide greater information to consumers. Moreover, there are many sources of obtaining vehicle history information. The FTC should not favor an exclusive technology or system by providing information about any specific public or private source of vehicle history.
- Third, creating another government website would be redundant to a website like <http://www.usa.gov/topics/travel/cars/buying-used.shtml> , which is created and run by the Federal government to educate consumers on buying a used car, and could create confusion for the consumer.
- Fourth, the Buyers Guide is intended to serve as an acknowledgement of a warranty. Dealers shouldn't be mandated to warrant VHRs, which could be a serious implication of mandating language about vehicle history in the Buyers Guide. In addition, the liability to dealers and the burden of enforcement by state and federal entities would make such a regulation even more burdensome.
- Creating a mandate for dealers to run VHRs (similar to the NMVTIS funding effort in California), will not only limit choice and stifle innovation, but, most importantly, could provide used car consumers with a false sense of security if the consumer relied only on information in the Buyers Guide.



CARFAX works with over 31,000 dealers across the United States on a daily basis to assist them in disseminating vehicle history information. They are all small businesses who struggle with increasing regulation. An FTC rule adding vehicle history requirements to the Buyers Guide would add additional burdensome regulations on top of existing federal, state and local laws and regulations that already work to safeguard consumers.

Finally, as noted in this letter, the digital era arrived and made the Buyers Guide less relevant. Today, the marketplace has created an environment where almost 100% of used car consumers are online doing their homework before even visiting a dealership. Any changes to the Buyers Guide at this point will be trying to fix a problem (dissemination of information to consumers) that doesn't truly exist.

We appreciate the opportunity to comment on this important rulemaking. If you have any questions or need further information, please don't hesitate to contact CARFAX.

Sincerely,

Faisal Hasan
North American Director of Government Relations & Data Acquisition
CARFAX, Inc.

