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Submitted Electronically

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

Re: Used Car Rule Regulatory Review, Project No. P087604

The undersigned serves as Legislative/Regulatory/Compliance Counsel for the National Independent Automobile Dealers Association (“NIADA”). NIADA submits the following comments to the Federal Trade Commission (“FTC” or “Commission”) regarding its request for public comments on the Commission’s proposed changes to the Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”).

Introduction

NIADA is the fifth largest trade association in the United States representing the interests of nearly 20,000 members in the used car industry for more than 67 years. NIADA's members include dealers that sell used vehicles wholesale, retail, and buy here pay here. Many of NIADA’s dealer members own and operate small businesses as defined by the Small Business Administration.

As NIADA explained in its original comments submitted to the FTC on this issue in 2008, any change to the Rule or the Buyer’s Guides (“Guide”) will impact every motor vehicle dealer in the United States that offers used motor vehicles for sale or lease, especially our members. We also stated then that we recognize the positive impact that the Used Car Rule has had on both dealers and consumers by providing standardized information about used motor vehicle warranty information that is delivered from dealers to consumers in a consistent format. We also agree with comments submitted by our colleagues at the National Automobile Dealers Association (“NADA”) that dealers nationwide have a goal of accurate disclosure of this warranty information.

NIADA applauds the process undertaken by the FTC in reviewing the Rule through the receipt of comments from affected parties and thoughtful consideration of those comments and their impact on commerce. NIADA is pleased with the Commission’s decision to retain the rule and by and large is

pleased with the proposed changes to the Rule and the Guide. In conjunction with NIADA's general support of the proposed changes, NIADA offers these comments for the FTC's consideration.

Disclosing Unexpired Manufacturer's Warranties and Other Third Party Warranties

NIADA commends the Commission for recognizing the difficulty for dealers to comply with mandatory disclosure of manufacturer and other third party warranties. Dealers do not often have this data readily available to them. We encourage the Commission to maintain the optional disclosure of third party warranties in the final rule promulgation.

NIADA supports the proposed change to the Rule differentiating between a warranty that is offered by a dealer as opposed to those that are offered by a third party such as a manufacturer or service contract provider. Including the words "dealer warranty" to the first page of the Guide provides clarity to the consumer as to what the dealer is providing for a warranty, if anything. NIADA also supports the FTC's recommendation to separate the dealer warranties from the non-dealer warranties on separate sides of the Guide. In directing the consumer to look at the back of the Guide for other information, we recommend a slight word change to the sentence on the bottom of the first page. Rather than state, "SEE OTHER SIDE for more about warranties and other information that applies to this vehicle", NIADA recommends that sentence read, "SEE OTHER SIDE for more about non-dealer warranties and other information that applies to this vehicle."

As the Commission correctly notes, many dealers will not have access to "warranty booklets, do not receive them from trade-in customers, and cannot obtain them from manufacturers." Notice of Proposed Rulemaking ("NPR"), Page 26. Likewise, there are some manufacturers that do not provide warranty booklets, thus dealers cannot comply with a requirement to provide these booklets.

Because of these limitations, NIADA has concerns with the sentence contained in the "Non-Dealer Warranties" section of the Guide that reads, "Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations." The Commission's rationale for including this particular sentence in the "Non-dealer Warranties" section is based largely on the fact that the same sentence is contained in the "Dealer Warranty" section. However, this rationale seems misguided. Existing law requires anyone offering a written warranty to have a document "fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty." 15 U.S.C. §2302(a). Thus, when a dealer offers a warranty, either full or limited, that dealer is required to have a warranty document explaining the scope of coverage and limitations that exist. The same would be true of "Non-Dealer" third parties offering warranties. However, there is no requirement that someone other than the offeror of the warranty have those documents.

Although the Commission states that the proposed revision to the Guide is not intended to provide full details about any non-dealer warranty, we believe that directing the consumer to ask the dealer for information that it may or may not have will simply lead to confusion for the consumer. The best way for a consumer to obtain accurate and real-time information regarding the existence, scope, and duration of

warranty coverage is for the consumer to contact the warrantor directly. NIADA recommends that the sentence in the “Non-Dealer Warranties” section be revised to read, “Ask the warrantor for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.”

Vehicle History and Condition Reports/Damage History/Disclosure of Known Defects/Dealer Inspection

The Commission notes in the Federal Register Notice associated with this NPR that the purpose of the Guide is to provide a uniform method for disclosing warranty information about a particular vehicle. Ultimately, the Commission’s rejection of additional mandates placed on the dealer maintains the integrity of the purpose of the Guide. The Guide was never meant to be a title history, vehicle history, or damage disclosure document. It was intended to provide the consumer with warranty information on the vehicle. Should the Commission waiver from the current proposal, the Guide will become so full of information to overwhelm the consumer and detract from its intended purpose.

As stated in our prior comments, vehicle history reports can be an excellent tool to better understand the history of a particular vehicle for both the dealer and consumer. However, as has been previously stated, they are not always accurate and the information is not always the most current information available. Some reports may not represent a vehicle’s entire history due to unreported repairs, poor reporting procedures and different brands/classifications in each state. Moreover, as the Commission correctly notes, NMVTIS is not yet fully operational in all states.

We previously pointed out the issues with requiring the dealers to provide vehicle history reports/damage history and the potential legal liability dealers would face if the FTC mandated that practice. We commend the Commission for not imposing these requirements on the dealers.

NIADA has concerns about the ambiguity as to the content and information contained in the proposed website referenced on the revised Guide. However, NIADA believes the proposed change directing consumers to the website and referencing the possibility of an independent inspection is an acceptable compromise to not requiring dealers to provide this information. NIADA welcomes the opportunity to work with the Commission in developing the website to ensure that one particular vehicle history entity is not endorsed over another.

In addition, NIADA supports the FTC’s decision to not require a disclosure of known defects on the Guide and mandatory dealer inspections. As the Commission notes, a consumer benefits from independent inspection and research to fully understand the current mechanical integrity without reliance on the dealer.

List of Systems

NIADA fully supports the inclusion of catalytic converters and air bags onto the “List of Systems” on the Guide for reasons outlined in the Commission’s proposed rulemaking.

Spanish Buyers Guides

NIADA supports the Commission's recommendation to maintain separate Spanish and English versions of the Guide and likewise has no opposition to the sentence instructing the consumer to ask for a Spanish copy of the Guide if he cannot read or understand the English version.

Internet Transactions

In addition to comments on the proposed changes to the Guide, the Commission asked for comments on whether deceptive practices by dealers are prevalent in Internet sales of used cars. In order to fully answer this question in the negative, the Internet vehicle sales process must be fully understood.

A. Types of Internet Transactions

1. Internet to in-store

A portion of Internet sales are not wholly Internet sales in that the sale actually takes place at the dealership's physical location. A large portion of current car buyers use the Internet as a tool to research, locate, and compare vehicles. Consumers shopping online tend to have specific vehicles in mind and are educated about the product. Once the consumer has located a particular vehicle, the consumer travels to the dealership location to make the purchase. The transaction occurs like any traditional sale. This customer will always have the opportunity to see the Guide on display in the window of the vehicle.

2. Pay Online Internet Shopper

The second type of Internet customer is one who purchases the vehicle without ever stepping foot into the dealership and pays through a third party website. The most common case of this customer is through auction sites such as eBay. The customer can either buy the car through a "winning" bid or by simply paying the purchase price. In most instances, the customer is provided with a lengthy description of the vehicle and the warranties associated with it, available from the dealer or through the auction site. Often, this information is more detailed than would fit on a traditional Guide.

Furthermore, this customer is able to email or call the seller to inquire about additional questions. Additionally, many of these type websites have built in protections for consumers such as insurance or some other guarantee that the customer will get the vehicle as described. Sellers have an incentive to fully and accurately describe their product because of potential breach of contract claims with the website provider and consumer actions.

Once the vehicle is paid for, or at least a deposit is secured, the customer is mailed paperwork to sign and mail back to the dealership before the customer may take possession of the vehicle. Since the dealer must provide the Guide at the time of sale, the customer receives the Guide with the packet of documents sent to the customer for signature. The customer has the ability to, at his leisure, review all

documents prior to signing. This affords the customer more time and less pressure to sign the documents than can occur with in-store customers.

3. Pay By Mail Internet Shopper

The third type of Internet transaction is a hybrid in which the customer never steps foot in the store but conducts the transaction by mail. This customer locates the vehicle to purchase online and either emails or calls the dealership to negotiate the price. Once the price is agreed upon, the customer pays in full or makes a deposit, and the dealership mails the customer all of the paperwork to sign and completes the transaction. Like the “pay online internet shopper,” this customer has the ability to review all purchase documents, including the Buyer’s Guide, at the customer’s pace in the customer’s home.

B. Applicability of the Buyer’s Guide to Internet Sales

Customers who take advantage of the Internet in purchasing a vehicle may be at a greater advantage than customers that only shop in person on the lot. While consumers who elect to shop in person have the opportunity to view the Guide on the vehicle well before deciding to purchase a vehicle, online shoppers have more information available at their fingertips. Those customers can pull a vehicle and title history on any or all vehicles they are considering. They may be able to research specific recalls on a particular vehicle or research mechanical issues prevalent in the vehicles under consideration. These opportunities far outweigh the slight disadvantage of not immediately viewing the Guide. Ultimately, the on-line purchaser will receive the Guide as part of the transaction regardless of how the vehicle is purchased.

As stated in our previous comments, NIADA does not support the inclusion of vehicle-specific Guides on Internet based transactions knowing the customer will receive a paper copy of the form at the finalization of the transaction. The dealer can include an example of the form or a link to the blank form on the FTC’s website when the dealer provides the specific warranty information as part of the on-line advertising. Should the dealer fail to provide the paper form at the completion of the transaction, that dealer has violated the Rule and likely committed an unfair and deceptive act or practice (“UDAP”) in violation of state law. Likewise, if the dealer has misrepresented the nature of the warranty, customers can pursue remedies for fraud and UDAP violations.

Absent any empirical evidence to suggest a prevalence of deception in Internet sales transactions, NIADA does not believe the FTC should promulgate any new regulations in search of a problem that in our opinion does not exist.

Conclusion

The Used Car Rule and Buyers Guide have been a valuable tool for both dealers and consumers in used vehicle transactions. NIADA is pleased that the FTC continues to see the need for the rule and has suggested only minimal changes. Overall, NIADA is pleased with the outcome of the FTC’s review and proposed changes to the Rule and Guide. We appreciate the opportunity to provide these comments for

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the Commission's consideration. NIADA welcomes the opportunity to discuss our comments with the Commission in further detail or address any issues raised in comments submitted by other interested parties as the Commission considers the final rule.

Sincerely,



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