



January 22, 2015

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

TRANSMITTED ELECTRONICALLY

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

Secretary Clark:

The National Salvage Vehicle Reporting Program (NSVRP) is a leading not-for-profit law enforcement support organization dedicated to reducing auto theft, title fraud and abuse and to helping control criminal activities related to the exportation of stolen and fraudulently obtained vehicles. NSVRP works closely with the U.S. Department of Justice (DOJ), the FBI, U.S. Customs and Border Protection, state governments and other parties to help further our mutual objectives. In addition, NSVRP is recognized by DOJ as an independent third party voluntary standards body for the National Motor Vehicle Title Information System (NMVTIS), which was created as a result of the Anti-Car Theft Acts of 1992 and 1996. NSVRP's board is comprised of representatives of local and national law enforcement organizations.

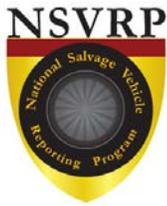
As expressed in NSVRP's submission of March 2013 in response to the FTC's Regulatory Review of the Used Car Rule, we believe that the Rule provides the FTC an excellent tool with which to fulfill its mission of preventing business practices that are anticompetitive, deceptive or unfair to consumers. We commend the Commission for continued consideration of the role the Used Car Rule can play in protecting consumer purchasers of used cars by providing meaningful vehicle history information.

Recommendation: Requirement for a warning notice of current branding, branding history and active stolen status to be prominently displayed on vehicles offered for sale

While NSVRP supports a public warning sticker requirement such as required by [California Assembly Bill 2011-2012 AB 1215](#), including a check if the vehicle is a current stolen vehicle, we believe that the most important components of any Used Car Rule vehicle history disclosure requirement are that *disclosure must be made by the seller if the vehicle history report indicates a branded title, a prior branded title or if there has been a prior total-loss reporting by an insurer (including self-insured entities) or a reporting by a junk/salvage entity into NMVTIS, or if there is an active stolen vehicle status reported* and that the *disclosure requirement must be based upon a vehicle history report that incorporates NMVTIS data*. This disclosure must be prominently displayed on a large red sticker affixed to the windshield of the vehicle in a place that is immediately visible to anyone looking at such vehicle being offered for sale.

Based upon the questions included with the SNPRM regarding the sort of information sellers should be

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required to disclose, which versions of the reports sellers should be required to share, and others, the Commission appears to recognize that there are a wide variety of vehicle history reports that often do not contain consistent information or types of information, or even identical status on the condition of a vehicle when reporting on the same unit of data. Requiring the seller to share all reports is not a solution as it is difficult to monitor and regulate, and nearly impossible to validate whether there is compliance with such a directive. Furthermore, in the absence of a common 'core content,' there is no standard for what reports and which information is deemed critical for disclosure to the public.

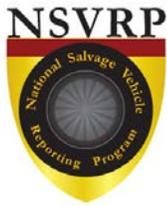
A requirement for disclosure based upon a timely commercial history report incorporating NMVTIS data, with a clear warning disclosure requirement when the vehicle's history shows a branded title, prior brand history or prior salvage vehicle reporting by an insurer or NMVTIS junk/salvage reporting entity, or when the vehicle is an active stolen vehicle, will ensure that prospective purchasers receive key protective information upon which to determine whether and how to proceed with the purchase process. The need for the report to be timely is paramount, both because an obsolete report may fail to include current critical information, and more specifically because NSVRP has observed patterns of conduct by parties who fail to comply with mandated reporting of total-loss and salvage activity within the required time periods and as a result the reporting from these non-compliant transactions lag the activity and allow for subsequent sales before the total-loss/salvage and title history information catches up with the reporting. In order to be considered timely, any such commercial vehicle history report containing NMVTIS data must have been run no more than 30 days prior to the current date. NSVRP recommends that any reports that include NMVTIS data that have been run in the past 30 days be available to prospective buyers upon request. After 30 days from the date of being run, all NMVTIS-containing reports shall be considered obsolete and would no longer meet the requirements for being the basis for a warning disclosure or for presentation to prospective buyers. Upon the request of the consumer, the sharing of all non-obsolete vehicle history reports that have been run by the dealer can provide a basis (beyond the baseline NMVTIS data) for the consumer to better evaluate the range of sales claims made by the salesperson in the representation of the vehicle offered for sale.

Why the Disclosure Warning Must be Based Upon NMVTIS Data

In addition to carrying fundamentally critical information that is most useful to potential used car purchasers as an indication of prior damage, NMVTIS also carries a legal mandate to be reported into and automatically includes all total loss vehicles even if there are loopholes in definitions in state rules. Non-reporting of these vehicles into NMVTIS, unlike in any other car history report service, would involve a violation of law and, as a result, NMVTIS may give a defrauded party who relied upon NMVTIS reporting some recourse against the party that failed to report (unlike for any other vehicle reporting service where the reporting is a result of voluntary compilation by the reporting service and a failure to show up will not give any recourse to a subsequent defrauded purchaser).

NMVTIS is a massive repository of salvage and total loss information. All junk/salvage/insurance (J/S/I) reporting entities from all jurisdictions report into NMVTIS and 44 states – representing 96% of all vehicle registrations – also presently provide data. All remaining states are expected to come on-line in the near future, as required under federal law. NMVTIS routinely carries explicit notification and reporting of total loss information more quickly and more completely than any other source as a result of the legal requirement for such reporting by J/S/I reporting entities that are obligated to report directly to NMVTIS. This J/S/I reporting even includes the acquisition of vehicles handled for disposal for others,

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information which only a handful of states capture. Therefore, in many cases this information is available only through the NMVTIS database.

Importantly, J/S/I reporting is typically searchable in the NMVTIS database within 24 hours of being reported as a result of the direct reporting into a NMVTIS data consolidator or to NMVTIS directly. It is quite common for a J/S/I report record to be available in a NMVTIS inquiry a month or more before it shows up in a state search or any other source simply because the NMVTIS update is overnight and the state processing typically takes place after a paperwork or batch processing delay as a result of internal processes or as a result of computer systems in need of modernization. The traditional title and branding sources available to commercial car history report services rely on waiting until getting updated data from the states, so there can be a significant lag in processing and updating affects reporting from those sources. These lags may vary depending upon the commercial provider.

The National Insurance Crime Bureau (NICB) VINCheck report is another example of a car history report that could be considered under the SNPRM Vehicle History Approach and illustrates the problems associated with the range of alternatives of allowing any commercial vehicle history report to serve as a basis for disclosure. VINCheck was widely promoted by NICB and many states as a resource for consumers to check for Hurricane Sandy and stolen car history, but only includes insurance vehicles reported by NICB member insurance companies who are participating in VINCheck and therefore would only provide data for a subset of vehicles damaged during Hurricane Sandy and its aftermath. Yet, such a database might also be considered a car history report that a dealer might reference in meeting the proposed SNPRM Vehicle History Approach obligations. Other classes of car history reports include manufacturer recall database reports and National Highway Traffic Safety Administration (NHTSA) recall databases. These and many others exist, and some cover a broad general population of vehicles while others are limited to just a subset of the vehicle population.

Allowing any commercial databases to be used would enable an entity to engage in 'shopping' for a history report that shows up clear even if NMVTIS (or others) do not. Such vehicle history shopping was detailed in the ABC "Nightline" investigative report on a NY Hurricane Sandy flood vehicle sold in NJ with no disclosure of prior flood damage. In the ABC report, the car salesman referenced that, since AutoCheck did not relay any damage history, the damage noted in the Carfax report "must be a glitch." In the case of that specific example NSVRP is aware of other potential vehicle history report databases that also did not flag this particular vehicle as a Sandy vehicle or as a total-loss vehicle. Furthermore, commercial vehicle history reporting services mentioned in the SNPRM – namely Carfax and Experian's AutoCheck – are just two reporting services. There are many other services available that may not be as reputable or reliable.

NSVRP would also like to take this opportunity to address the Commission's conclusion from NSVRP's March 2013 comments that "NMVTIS reports may not provide accurate information with respect to some vehicles" due to failure of certain entities to comply adequately with their titling, branding and reporting obligations, particularly as relates to Hurricane Sandy damaged vehicles. The fact is that, due to there being many instances where disclosure of a total loss event has been hidden through activities such as title skipping and title branding avoidance and other efforts by parties to subvert the regulation and reporting process, the various car history report service options that are available to notify the public have not uniformly been able to capture many of the Hurricane Sandy flood transactions – transactions which

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number closer to 625,000-650,000 violations than the 250,000 count attributed to NSVRP in the Commission's SNPRM.

NSVRP's March 2013 comments indicated we estimated Hurricane Sandy vehicle losses in excess of 500,000 units. The 250,000 referred to by the Commission is likely a reference to numbers quoted from an NICB press release of 250,500 vehicles reported by NICB of insurance-covered vehicles damaged as a result of Hurricane Sandy based upon insurance total loss claims processed by NICB member insurance companies. As NICB noted and NSVRP stated in its March 2013 submission, that number is actually much higher based upon considerations such as the typical model age cutoff for consumers to purchase collision and comprehensive insurance and the fact that the average age of a vehicle on the road is now more than 11 years old, self-insured fleets and other private parties that do not carry collision and comprehensive insurance coverage for their vehicles, and other vehicles not insured through NICB member insurers, as well as new vehicles that had not yet been sold. In our research, NSVRP has already identified well over 500,000 of those flood loss vehicles with discreet VINs.

Unfortunately, natural disasters are not the only times these types of scenarios occur. NSVRP has monitored online salvage auctions for several years. Nearly every single online salvage auction that NSVRP has monitored periodically offers severely damaged cars with inexplicably clean titles and many are purchased at these auctions without proper branding to disclose prior damage. In many cases, these vehicles are resold to secondary resellers who may have no idea of the prior damage history and who then resell those vehicles to the consumer. When mandated reporting and proper disclosure are avoided by entities in the used and salvage vehicle dispensation system, vehicle history reports will not be able to capture the vehicle's true damage history; if it has not been reported it cannot be captured. Linking the reporting to NMVTIS may mitigate some of the consequences of that non-reporting by potentially providing a consumer with some recourse against the non-reporting entity or entities due to the legal mandate for reporting into NMVTIS.

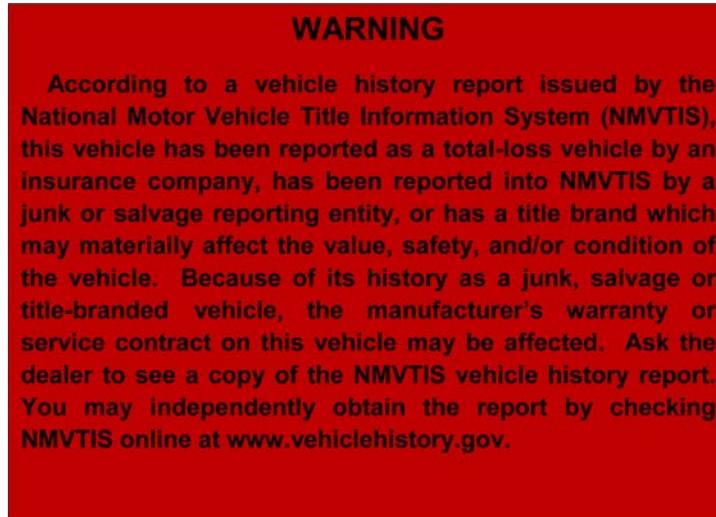
It is also important to note that NMVTIS reporting operates using a different model from these various alternative database products. Whereas CarFax, AutoCheck, VINCheck and others are competing reports relying on the decision of the consolidator as to what information to include, NMVTIS is a federal database whose information is made available to the public via a mechanism using a 'public portal' provider model. The NMVTIS data is offered as information to be included by any of these commercial vehicle history providers and offered through their existing products to the user rather than as a government generated product in competition with the vehicle history report providers. California currently requires all car dealers to check NMVTIS reporting prior to selling used cars to the retail public, and post a warning sticker on the vehicle being offered for sale in the event that it has been branded, previously branded or reported into NMVTIS as a salvage or total-loss vehicle. Now that NMVTIS also includes current open vehicle theft data, that warning should also include a disclosure when the vehicle being proposed for sale is identified as a current stolen vehicle.

Today, the major commercial vehicle history reporting services do incorporate NMVTIS reporting into their products when offered to dealers in California. The warning advisory is required to be prominently posted on the vehicle. It is this type of disclosure model that we believe is critical to alerting the public because it provides an unambiguous threshold standard for posting an alert to the public while not discriminating against any current or future vehicle history reporting service. Please find a sample of an

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AB1215-style warning disclosure document immediately below:



NSVRP strongly urges the Commission to reconsider the SNPRM Vehicle History Approach to include the following:

- Require sellers to check each vehicle's history with a history report that incorporates NMVTIS data and prominently display on the vehicle a warning sticker on a vehicle when offered for sale if the NMVTIS vehicle history data, recent within the past 30 days, indicates that:
 - The vehicle is or has been reported as a total loss by an insurance company;
 - The vehicle has been reported as acquired by a NMVTIS junk/salvage reporting entity;
 - The certificate of title contains a brand or was previously branded; and/or
 - The vehicle is an active stolen vehicle.
- Require seller to make at least one vehicle history report containing NMVTIS data, current within 30 days, available upon request from potential purchaser.
 - Seller should be required to provide any NMVTIS data-containing vehicle history reports run within the past 30 days.
- At the time of sale, require seller to run a current (day-of-sale) vehicle history report containing NMVTIS data to confirm to the buyer that no additional disclosure is required due to new and recent reporting which would result in a warning alert.
 - The day-of-sale report should be made available to the purchaser upon request.

The NSVRP-Proposed Approach is More Easily Monitored, Regulated and Validated than Other Proposed Vehicle History Approaches

In our opinion NMVTIS data provides the starting point for protection of consumer interests. Other federal databases can also be combined with this NMVTIS reporting – and many data providers do offer enhanced reporting that augment and differentiate their services. NSVRP considers many of these services to be very valuable and to provide additional benefits to consumers and we believe that any NMVTIS data-containing reports run by the seller should be required to be provided to the prospective purchaser upon request to help the consumer confirm that representations made about the vehicle are supported, or

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not disputed, by other information available to the dealer. However the bottom line for NSVRP is that – because of the timeliness, comprehensiveness, focus on the key baseline factors for disclosure, legal mandate for reporting, universality of data elements and other reasons outlined above – the Commission should mandate that a current NMVTIS public portal data reporting should be the base criteria for any vehicle history report that it deems suitable for consumer disclosure.

NSVRP’s proposed AB1215-style Vehicle History Approach will not pose the same challenges as the SNPRM Vehicle History Approach with regard to difficulty of monitoring, regulating and validating whether the dealer is complying with making available all vehicle history reports obtained since the seller offered the vehicle for sale. First, the requirement that the need for a consumer warning be based upon a report containing NMVTIS data and the requirement that only reports including NMVTIS data be provided to consumers, any reports required to be shared with consumers will contain a common ‘core content’ with a clear definition of which information is deemed critical for disclosure to the public. Second, the warning disclosure on vehicles that meet certain conditions enables an investigator to readily inspect a facility and identify patterns of non-compliance based upon a quick physical inspection of the vehicles without requiring an undercover investigation of individual sales transactions to verify non-compliant sales practices. Any other information included in NMVTIS data-including reports provided to consumers is supplemental and will simply add to the consumers understanding of the vehicle’s history, and how that aligns with the assertions of the seller.

The data contained in NMVTIS is intended to provide the key baseline threshold for protecting the used car buying public from undisclosed catastrophic risks by making consumers aware of prior major accidents, total loss, theft or prior branding of a vehicle. This minimum standard is straightforward for the Commission to articulate and easy for the marketplace to manage. It is also easy for the used car buying public to understand in a sales situation, and for regulators to validate for compliance. Most importantly, this method will provide critical information and protections to the public.

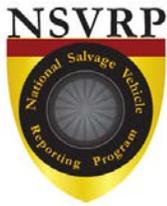
Recommendation: Requirement for dealers to actively confirm if open safety recalls exist

NSVRP also urges the Commission to mandate that all dealers must check the safety recall database for every vehicle they are planning to offer for sale so that they are aware of any open safety recalls issued by the vehicle manufacturer. This eliminates the possibility that a seller could be unaware of any open safety recall and through this awareness they would then be in the position to correct any open safety defect(s) before offering the vehicle for sale.

While not under the authority of the FTC to mandate the repair of open recalls once open recall notices have been discovered by the dealer, NSVRP urges that in the interest of public safety any open safety recall items must be repaired and the recall notices cleared from the open recall database before being offered for sale to a consumer. NSVRP believes that, if such a repair requirement were mandated, the requirement to repair all safety related recall defects before selling a vehicle to a consumer cannot be allowed to be waived by the consumer even if through disclosure of such defect by the seller or through a waiver signed by the consumer.

Recent years have seen a substantial rise in automotive recalls. In July of last year, NHTSA announced that automakers had already recalled more vehicles in the U.S. in 2014 than in any other year on record.

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On November 4, 2014, ABC News reported that automakers had issued more than 550 recalls – covering more than 52 million vehicles – to date in 2014. Many of the recall issues are quite serious, ranging from gas leaks and stalling issues to shorts in airbag systems. Even worse, many of these recalls go unresolved. According to Carfax, more than 3.5 million used cars with unresolved recalls were offered for sale last year and the company’s research indicates that more than one in ten used cars for sale online has an open recall.

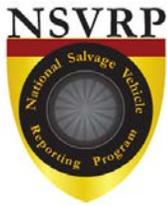
These safety recall notices are very important for the public. In the case where a new recall notice is issued after a vehicle has already been sold to the public, the ability to identify and communicate with the vehicle owner based upon manufacturer records is primarily effective where the original purchaser of the vehicle from the franchise dealer still owns the vehicle and where the address on file with the manufacturer is still the current address of the owner.

In cases where the recalled vehicle is a used vehicle that has already been sold to a second owner or where the original owner still owns the vehicle but has moved to another jurisdiction, the manufacturer’s owner address records are highly compromised and out of date. In the situation where the original owner has moved subsequent to purchasing the vehicle, the address on file is often a dead lead; and in the case where the vehicle has been resold by the original owner to a subsequent buyer, the wrong individual is typically listed as the owner of the vehicle in the manufacturer’s recall database. When manufacturer ownership records provide the basis for notification of all current vehicle owners, it is difficult to ensure that the recalls of resold, transferred and relocated vehicles are brought to the attention of the current vehicle owner and resolved before instances of injury or even death can take place. Those manufacturer driven safety recall programs will mainly reach original owners and not the secondary market.

In the case where the vehicle is being resold by a dealer to the retail public, the FTC is in a position to require the dealer to check for open safety recalls and thereby help protect the public from acquiring a vehicle where the seller is otherwise unaware of the open safety recall status. With the ongoing increase in number and severity of recall issues, NSVRP believes this is a critical safety initiative issue that must be addressed by the Commission.

Below is an example of an actual open safety recall notice as posted on the NHTSA recall website SAFERCAR.gov. As you can see, the importance to the public of being protected from acquiring vehicles with these open safety recall items is critical. The first step in shaping that protection is awareness on the part of a seller that such safety recall exists that represents a current clear and present public safety danger.

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Recalls Results Look-up by VIN

[Print](#)

VIN: 2T1KR32E24C195653
Year: 2004 **Make:** TOYOTA **Model:** Matrix
Number of Open Recalls: 1

NHTSA Recall Number: [13V029](#)
Manufacturer Recall Number: D0B

Recall Date: January 30, 2013

SUMMARY:

Toyota is recalling certain model year 2003-2004 Corolla and Corolla Matrix vehicles and 2003-2004 Pontiac Vibe vehicles. The supplemental restraint system (SRS) circuits are susceptible to internal shorting. The electrical short may create an abnormal current flow and increased heat which can damage the circuits. This could result in an inadvertent deployment of the front airbags and/or seat belt pretensioners.

SAFETY RISK:

Inadvertent deployment of the airbags or the seat belt pretensioners may increase the risk of injury and the possibility of a vehicle crash.

REMEDY:

Toyota will notify their owners, and general motors will notify theirs. Dealers will install a supplemental harness containing an electrical filter between the airbag control module and its wire harness, free of charge. The recall began on March 13, 2013. For more information, Toyota owners may call 1-800-331-4331 and pontiac owners may call 1-800-620-7668.

RECALL STATUS: Recall **INCOMPLETE**

MANUFACTURER NOTES:

THIS RECALL DATA LAST REFRESHED: Jan 16, 2015

Additional Safety Information

Besides the VIN search tool you just used, NHTSA offers additional safety information based on a vehicle's make, model, and model year and not tied to any particular VIN. A search by vehicle make, model, and model year gives you access to information about technical service bulletins, NHTSA investigations, and owner complaints, as well as safety recalls on aftermarket equipment that is often not linked to a particular VIN or even to your vehicle's manufacturer.

To search NHTSA's safety information based on your vehicle's make, model, and model year, please go to the [Safety Issues section](#) and follow the instructions there.

Recall information for this manufacturer is only available going back to January 01, 1999. If your vehicle was manufactured before this date, please contact the manufacturer for possible additional recall information.

NSVRP considered making a proposal that, in the case a dealer fails to make these safety repairs, the seller would be required to provide disclosure of the existence of open recalls on the vehicle by means of a large red warning sticker prominently displayed on the windshield by the used car dealer indicating the following in 28-point type:

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This vehicle is known by the seller to have open safety recall defects and is presumed to be dangerous to operate in its unrepaired condition and could potentially cause bodily injury and/or death.

However, upon further reflection, we emphatically do not believe this warning sticker to be an adequate solution. As the above example of an unresolved recall on a 2004 Toyota Matrix in which an electrical short could result in an inadvertent deployment of the front airbags reveals, the consequences of not addressing and repairing recall issues are very high. Because it is too easy for a disclosure to be buried in a pile of paperwork or for an unscrupulous seller to either not post a required notice or to verbally explain away the importance of any notice, the only appropriate solution is to ban the resale of such a vehicle to a retail buyer until such time that the open safety recalls have been repaired and those repairs are confirmed as cleared in the safety recall database.

Furthermore, a requirement to merely provide disclosure could potentially be used by a dealer as a defense from culpability due to prior disclosure, therefore harming existing consumer protections that may be in force under state or federal law. An example of such conduct was documented in the recent ABC 'Flood Cars' story. The consumer would have been harmed as a result of a signed disclosure statement – a signature that was induced under false verbal claims – that was only able to be refuted because the entire transaction had been recorded on hidden video. As noted in the ABC story, consumers would normally not have the benefit of an undercover recording and would therefore have difficulty pursuing a claim when a defective disclosure statement is on file.

Members of the NSVRP board would be happy to discuss this matter with you further at your convenience. More information may also be found at www.NSVRP.org. Please do not hesitate to contact me if you have any questions.

Respectfully submitted on behalf of the NSVRP Board,

Howard Nusbaum
Administrator
National Salvage Vehicle Reporting Program (NSVRP)

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NSVRP Responses to FTC Questions

Vehicle History Report Disclosures

1. **The Commission proposes to amend the Rule by requiring dealers who have obtained a vehicle history report to check a box on a revised Buyers Guide indicating that they have a vehicle history report and will provide a copy of the report upon request.**
 - a. **Should the Commission require dealers who have obtained a vehicle history report to check a box indicating that the dealer has a vehicle history report and will provide a copy upon request? Why or why not?**

NSVRP supports an AB1215-type notification of prior history information and recommends that at least one current (within 30 days) vehicle history report containing NSVRP data be available to prospective purchasers upon request, in addition to any other vehicle history reports containing NMVTIS data obtained by the seller within that time period. NSVRP believes that the most important components of any Used Car Rule vehicle history disclosure requirement are that *disclosure must be made by the seller if the vehicle history report contains a branded title, a prior branded title or prior salvage reporting by an insurer or junk/salvage entity into NMVTIS, or if there is an active stolen vehicle status reported*, and that *the disclosure requirement must be based upon a vehicle history report that incorporates NMVTIS data*. NMVTIS carries a legal mandate to be reported into and also automatically includes all total loss vehicles even if there are loopholes in definitions in state rules. Non-reporting of these vehicles into NMVTIS, unlike in any other car history report service, would involve a violation of law and, as a result, NMVTIS may give a defrauded party who relied upon NMVTIS reporting some recourse against the party that failed to report (unlike for any other vehicle reporting service where the reporting is a result of voluntary compilation by the reporting service and a failure to show up will not give any recourse to a subsequent defrauded purchaser).

While the awareness that a vehicle is presently branded, was previously branded, was a salvage or total-loss vehicle or is an active stolen vehicle is a baseline fundamental disclosure that all potential buyers should have an absolute right to know – along with being protected from purchasing a vehicle with an open safety recall – there are other valuable types of information that are contained in various vehicle history reports that can help a buyer better evaluate the condition and suitability of a vehicle for their particular needs. Information such as the service history and maintenance records on a vehicle can help a buyer determine how well (or badly) a vehicle has been taken care of and can also be of value to a prospective buyer when it is available to the dealer selling the vehicle. Furthermore, when the dealer has such vehicle history report information available, sharing it with the prospective buyer can validate (or at times discredit) claims made in the sales process or alter the understanding of a buyer as compared to the visual impression of the vehicle that has been showcased and prepped for sale.

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j. Should the proposed Rule define the term “vehicle history report”? If so, what should such a definition contain?

Yes. “Vehicle history report” should be defined as being limited to a report that includes the NMVTIS consumer report information (NMVTIS public portal report or other car history report that incorporates a delineated section that is the NMVTIS reported data). Commercial vehicle history reporting services mentioned in the SNPRM – namely Carfax and Experian’s AutoCheck – are just two reporting services. These services range from some that are broadly comprehensive to others limited in coverage and that may not be as reputable or reliable. All reporting services, however, suffer from the limitation of containing data that is compiled on a voluntary basis rather than reported into a database under a mandate of law. Non-reporting into NMVTIS, unlike in any other car history report service, would involve a violation of law and, as a result, NMVTIS may give a defrauded party who relied upon NMVTIS reporting some recourse against the party that failed to report. No other database besides NMVTIS can provide that potential benefit.

Additionally, while other reporting databases may contain a range of information, NMVTIS is purely focused on the reporting of the critical elements of prior branding and prior total-loss history and nothing else. It is clear, unambiguous and easy to follow – so it is well suited as a trigger to a ‘red-light/green light’ type of alert to a consumer that an important threshold for an alert has been met in a way that no other database report is able to produce. Other reports may contain information that while interesting, does not provide critical and unambiguous markers of a threshold nature (such as oil changes and other maintenance records) and while valuable as secondary information, may mask the core issues for health and safety.

k. Should the Commission require that dealers who have obtained multiple vehicle history reports provide copies of all the reports upon request? If not, why not?

The Commission appears to recognize that there are a wide variety of reports that often do not contain consistent information or types of information, or even identical status on the condition of a vehicle even when reporting on the same unit of data. Requiring the seller to share all reports is not a solution as it is difficult to monitor and regulate, and nearly impossible to validate whether there is compliance with such a directive. Furthermore, in the absence of a common ‘core content,’ there is no standard for what reports and what information is deemed critical for disclosure to the public. If the Commission proceeds with the current SNPRM Vehicle History Approach, sellers must be required to provide copies of all of the reports upon request in order to avoid ‘vehicle report shopping,’ where a report is provided that happens to not contain the adverse information on a vehicle.

Such “vehicle history shopping” was detailed in the ABC “Nightline” investigative report on a NY Hurricane Sandy flood vehicle sold in NJ with no disclosure of prior flood damage. In the ABC report, the car salesman referenced that since AutoCheck did not relay Hurricane Sandy Flood damage history, the damage noted in the Carfax report “must be a glitch.”

Requiring a report that is accessed from the NMVTIS public portal or that relies upon NMVTIS data as one component of the report helps to avoid this practice. It should be noted that if the Commission accepts NSVRP’s recommendation that any approved vehicle history report must be one that is a NMVTIS public

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portal provider report then at a minimum the dealer needs to provide at least one report that contains a recent NMVTIS authorized public portal report to any prospective buyer. Such a report used in offering a vehicle for sale should be required to be current to at least the last 30 days to limit the risk of structural time lags in reporting.

Sellers should also be required to provide any NMVTIS data-containing vehicle history reports run within the past 30 days to prospective purchasers, upon request, to help consumers confirm that representation made about the vehicle are supported, or are not disputed, by other information available to the dealer.

At the time of sale, the seller should be required to run a current (day-of-sale) vehicle history report containing NMVTIS data to confirm to the buyer that no additional disclosure is required due to new and recent reporting which would result in a warning alert. The day-of-sale report should be made available to the purchaser upon request.

1. Should the Commission require that dealers who have obtained multiple reports provide only one report to consumers? If so, should dealers be required to provide consumers with the most recent report? If not, which report should dealers be required to provide?

A recommendation to only provide one report when several different ones were run could be interpreted as providing legal defense to a dealer who runs multiple reports and provides only one report to the consumer, presumably one that does not contain adverse information. This is another reason to have an explicit and unambiguous requirement to base the flagging of an adverse disclosure to a prospective buyer on the same basis as CA AB1215 does – namely a disclosure of a prior branding of a title or a reporting into NMVTIS by a Junk/Salvage/Insurance reporting entity of a prior total-loss or salvage report made into NMVTIS. This is unambiguous and the consumer is then provided guidance that they may wish to have the vehicle inspected before purchasing it. Reading a commercial car history report is informative but also confusing and can be difficult to interpret. Furthermore, there are many commercial vehicle history reports. While some receive information from a wide range of sources in a fairly timely manner, others may have fewer sources and receive the information with a greater delay. The requirement to access any report besides a report containing the NMVTIS information opens the process to the potential for great abuses and negates the protective intent of the rule.

It should be noted that, provided the Commission accepts NSVRP's recommendation, any approved vehicle history report must be one that is a NMVTIS public portal provider report and at a minimum the dealer needs to provide at least one report that contains a recent NMVTIS authorized public portal report to any prospective buyer. Such a report should be required to be current to at least the last 30 days to limit the risk of structural time lags in reporting and for the reporting to be out of date.

Sellers should also be required to provide any NMVTIS data-containing vehicle history reports run within the past 30 days to prospective purchasers, upon request, to help consumers confirm that representation made about the vehicle are supported, or are not disputed, by other information available to the dealer.

At the time of sale, the seller should be required to run a current (day-of-sale) vehicle history report containing NMVTIS data to confirm to the buyer that no additional disclosure is required due to new and

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recent reporting which would result in a warning alert. The day-of-sale report should be made available to the purchaser upon request.

n. Should dealers be required to disclose the date(s) when they obtained vehicle history reports?

Yes. Furthermore, the date should be included on the report. When events such as Hurricane Sandy or the 2013 Colorado floods have taken place, it is critical to know the date that a report was run. Obviously, a report run 30 days before such an incident would be of little protective value to a buyer of a vehicle that was flooded – yet one run after the claim was paid off and the vehicle titled and branded and which showed that flood loss status would be of great value.

It should be noted that, provided the Commission accepts NSVRP's recommendation that any approved vehicle history report must be one that is a NMVTIS public portal provider report, then at a minimum the dealer needs to provide at least one report that contains a recent NMVTIS authorized public portal report to any prospective buyer. Such a report should be required to be current to at least the last 30 days to limit the risk of structural time lags in reporting and for the reporting to be out of date.

Sellers should also be required to provide any NMVTIS data-containing vehicle history reports run within the past 30 days to prospective purchasers, upon request, to help consumers confirm that representation made about the vehicle are supported, or are not disputed, by other information available to the dealer.

At the time of sale, the seller should be required to run a current (day-of-sale) vehicle history report containing NMVTIS data to confirm to the buyer that no additional disclosure is required due to new and recent reporting which would result in a warning alert. The day-of-sale report should be made available to the purchaser upon request.

o. Once a dealer views a vehicle history report, should the Commission require that the dealer make the report available to consumers for as long as the dealer possesses the vehicle to which it applies regardless whether the dealer discards the report before selling the vehicle?

NSVRP considers a report run more than 30 days ago to be obsolete relative to a more recent report run by the same reporting service. At a minimum, any dealer should be able to discard an earlier report run when they have a more current report on file from the same report source and available to them. Keeping obsolete copies of such reports on a vehicle that is in inventory and not yet sold would be a burden and counter-productive. Furthermore, NSVRP recommends that the Commission mandate that for any vehicle history report approved for use for providing to a prospective buyer, that the Commission require that the report offered be no more than 30 days old, and that when the current report is run that the old copies of that same report can be discarded.

This detail and complexity would not be necessary with an AB1215 process – if there is no branding on the title, no branding history on the vehicle, and it was not reported into NMVTIS by a junk/salvage/insurance reporting entity in the past (as shown on a NMVTIS public portal report or car history report that contains the NMVTIS public portal information) then it does not have a warning

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displayed. All reports that are NMVTIS public portal provider reports would be meeting that minimum standard and all would be using the exact same data for that baseline reporting. Any vehicle history report data above and beyond that information will also be made available to the consumer, but the vehicle has then cleared the basic hurdle of avoiding a red warning alert.

If the Commission proceeds with the SNPRM Vehicle History Approach, then the dealer should be required to provide the most current, as well as any and all reports accessed, to the consumer for as long as the dealer possesses the vehicle to which it applies. If however the Commission accepts NSVRP's recommendation to require a warning based upon the NMVTIS reporting model then, at a minimum, the dealer needs to provide at least one report that contains a recent NMVTIS authorized public portal report to any prospective buyer. Such a report should be required to be current to at least the last 30 days to limit the risk of structural time lags in reporting and for the reporting to be out of date.

Sellers should also be required to provide any NMVTIS data-containing vehicle history reports run within the past 30 days to prospective purchasers, upon request, to help consumers confirm that representation made about the vehicle are supported, or are not disputed, by other information available to the dealer.

At the time of sale, the seller should be required to run a current (day-of-sale) vehicle history report containing NMVTIS data to confirm to the buyer that no additional disclosure is required due to new and recent reporting which would result in a warning alert. The day-of-sale report should be made available to the purchaser upon request.

- q. Should the Commission require dealers to create and to maintain records when they obtain or view vehicle history reports? If so, what recordkeeping should the Commission require and for what length of time should dealers be required to maintain the records?**

The basic requirement that the Commission should accept is that there is a shelf life to any vehicle history report. NSVRP recommends that for a vehicle being offered for sale, the vehicle history report incorporating NMVTIS data used to determine the status of a vehicle may not be more than 30 days old. **Notwithstanding this, when a sale is being carried out, a current report should be required to confirm to the buyer that there is no new and more recent information has been reported which would result in a warning alert for the prospective purchaser.** Based upon our experience with the commerce in salvage vehicles, there is an all too common tendency for parties to 'late-file' – at times even failing to meet legal filing requirements. This can create situations where the reporting of total-loss events lags, and, unless a final reconfirmation is made when a sale is closed, the public is not going to be protected.

- s. What are the costs and/or benefits to consumers of requiring dealers to disclose that they have obtained vehicle history reports? Once disclosed, what are the costs and/or benefits to consumers of requiring dealers to provide copies of the reports to consumers?**

While not our specific area of expertise, NSVRP believes that a majority of used car buyers are not likely to exit the point of sale, particularly if it is a physical lot or an online or physical used car auction, to

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access a vehicle history report. While this practice is known to be an important step in the used car buying process, with the high pressure of a dealer's lot or an auction and the tendency to believe that bad used car stories happen to "someone else," we suspect that a large percentage of purchasers may not check any vehicle history reports before making a purchase. Therefore, providing an AB1215-type warning, namely a disclosure of a prior branding of a title or a reporting into NMVTIS by a Junk/Salvage/Insurance reporting entity of a prior total-loss or salvage report made into NMVTIS, would provide the consumer with important information about proceeding with purchase of the vehicle – whether that be getting the vehicle inspected, checking additional vehicle history reports, more accurately assessing the value of the vehicle, or other actions – that he or she is not likely to receive before purchase otherwise.

- t. What are the costs, potential liabilities, and/or benefits to dealers of requiring dealers to disclose that they have obtained vehicle history reports, and affirmatively provide such reports to consumers, only when the reports include negative information (rather than provide any obtained report upon request as proposed in the SNPRM Vehicle History Approach)? How should the Rule define negative information?**

Because of the many different vehicle history reports, each with its own format, benefits and limitations, and to the many different branding terms and requirements across all 50 states, NSVRP believes that requiring dealers to determine negative information from any of the vehicle history reports available would put an undue burden on them to become experts in reading and translating these reports, and that it would also open the process to the potential for user error by the seller.

With an AB1215-type process in which sellers must access a report incorporating NMVTIS data, the information is easy to read and it is simple to define when a warning would be required – if the NMVTIS vehicle history data indicates that the vehicle is or has been reported as a total loss by an insurance company or has been reported as acquired by a NMVTIS junk/salvage reporting entity, or if the NMVTIS indicates that the certificate of title contains a brand or if the vehicle is an active stolen vehicle.

- v. The Commission also invites comments on the alternative approaches discussed in Section II of this SNPRM. Which, if any, of the following alternatives provides the most benefits to consumers? To dealers? Which, if any, of the following alternatives is the most costly or burdensome for dealers? Provide any data, surveys, or evidence that supports your comments regarding each of the alternative approaches:**
- i. NPRM Vehicle History Approach**
 - ii. SNPRM Vehicle History Approach**
 - iii. AB 1215 Vehicle History Approach**

NSVRP supports an AB1215-type Vehicle History Approach. We believe sellers should be required to check each vehicle's history with a history report that incorporates NMVTIS data in their report, and to include a warning sticker on the vehicle if the NMVTIS vehicle history data indicates that the vehicle is or has been reported as a total loss by an insurance company or has been reported as acquired by a NMVTIS junk/salvage/insurance reporting entity, if the data indicates that the certificate of title contains a brand or was previously branded, or if the vehicle is an active stolen vehicle.

NSVRP recommends that the FTC require the seller to make at least one vehicle history report containing

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NMVTIS data, current within 30 days, available upon request from potential purchaser and that the seller should be required to provide any NMVTIS data-containing vehicle history reports run within the past 30 days. At the time of sale, the seller should be required to run a current (day-of-sale) vehicle history report containing NMVTIS data to confirm to the buyer that no additional disclosure is required due to new and recent reporting which would result in a warning alert. The day-of-sale report should be made available to the purchaser upon request.

We believe this approach would go far in preventing business practices that are anticompetitive or deceptive or unfair to consumers without unduly burdening legitimate business activity. Based on our collective experience, this proposal would be efficient to operate, would provide a high level of protection for consumers, and would be simple to enforce.

Additionally, requirement of the warning sticker avoids potential confusion by consumers regarding brand variations from state to state. The AB1215 approach would also allow for higher-value commercial car history reports to incorporate the NMVTIS data in their products and offer a more complete report to vehicle purchasers. It eliminates the possibility of NMVTIS being seen as having a monopoly or being in competition with other car history report companies since the traditional car history report services and the new NMVTIS public portal providers are all commercial ventures and not government agencies. Most dealers already use one of the major car history reports or the NMVTIS public portal reports, and in California the car history report companies have successfully incorporated NMVTIS reporting into their products at little additional cost to the dealer.

NSVRP does not agree with the Commission's assessment that the AB1215 approach is limited because "consumers cannot tell from the warning label what title brands, insurance information or salvage history may apply to a vehicle without asking the dealer for information and/or a copy of the NMVTIS report," that the lack of a warning label will lend a "false sense of security" to potential purchasers, or that the NMVTIS report is limited because it "would not alert consumers to sources of information such as commercial vehicle history reports that could reveal hidden damage or mechanical defects that NMVTIS is not designed to detect." We believe that the NMVTIS reporting is far more simple, is clear and unambiguous, and focuses on the baseline requirement of alerting a consumer to a prior total-loss and prior vehicle branding of a vehicle offered for sale. These are the key metrics for protecting a consumer.

NSVRP believes that as a matter of public policy every vehicle intended to be sold by a dealer to a consumer must be checked by the dealer against the federal database of open recall items in advance of offering the car for sale to consumers. The Commission should mandate that this check be done so as to eliminate any question of a lack of awareness of a dealer of a reported manufacturer's recall that is listed on that vehicle. Furthermore, NSVRP strongly believes that there should be a duty that any open safety recall items must be repaired by the dealer and the recall notices cleared from the open recall database before any vehicle subject to recall notice is offered for sale. Furthermore, the requirement for a dealer to repair all safety related recall defects before selling a vehicle to a consumer cannot be allowed to be waived by the consumer in any case, even through disclosure of such defect by the seller or through a waiver signed by the consumer.

We understand that mandating the repair of open safety recall notices may fall outside the jurisdiction of the Commission, and we urge as a matter of public policy that the appropriate federal agency – be it the

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FTC, DOT or other such agency – mandate such a requirement to protect the public from an unreasonable risk. Hopefully, the Commission may determine that it does have the authority to require dealers to check the open safety recall database before offering a vehicle for sale and that no used vehicle can be offered for sale with an open recall notice, and make such a requirement in the updated Used Car Rule.

Sellers should not face the burden of providing every detail of a vehicle’s history. However, disclosure of prior significant damage is essential because, when accurate prior damage history is not available, consumers’ health, safety and finances are put at significant risk. Clean-title or under-branded vehicles with undisclosed damage history are worth much less than the fair market value consumers typically would have paid for an undamaged vehicle. When the effects of prior damage begin to be revealed through mechanical failures, consumers find themselves on the line for extensive, unplanned repairs. The most reliable indicator of prior damage history comes from NMVTIS data that clearly and simply indicates whether a vehicle has been branded or reported by a NMVTIS junk/salvage reporting entity in the timeliest manner possible, and from the most sources available.

- iv. IA AG Vehicle History Approach
- v. ADD Vehicle History Approach
- vi. NC AG Vehicle History Approach

w. Provide any studies, surveys, or other data concerning the number or percentage of used vehicles sold or offered for sale with clean titles that should have title brands or other negative information shown in their vehicle history reports.

In fulfilling our mission of reducing auto theft, title fraud and abuse, NSVRP routinely monitors the sale of used and salvage vehicles. In NSVRP’s monitoring and analysis of vehicles damaged in Hurricane Sandy and other natural disasters, we have identified substantial numbers of vehicles, including insurance total loss vehicles, that were not branded and that have reentered the used and salvage vehicle marketplace with inadvertently clean titles and resold without a brand. These kinds of behaviors enable source providers of such vehicles to artificially enhance values and interfere with the information salvage vehicle buyers and downstream consumer purchasers need when purchasing vehicles that were involved in total loss events. Stories aired on ABC’s ‘Nightline’ and ‘The Outlook’ in July and August of 2013 highlighted an example of this type of activity by following the fraudulent sale of one of the many Hurricane Sandy total loss flood vehicles sold to a consumer by a used car dealer in NJ and tracing it back to titling and branding issues with both an insurer and its contracted salvage auction company.

The dealer identified in the ABC investigation was recently sentenced to three years in state prison. One insurer admitted to handling roughly 174 other New Jersey vehicles in the same manner, but did not comment on whether any or all of the remaining 3,600+ Hurricane Sandy-damaged cars the company insured and declared as total losses were also sold with unbranded titles. The results of our analysis to date indicate that these incidents likely represent many other similar scenarios.

The NJ Attorney General credited NSVRP along with ABC for providing the information that enabled this investigation leading to this conviction. This is just one example of the type of work and the level of involvement and understanding we have in this area.

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Unfortunately, natural disasters are not the only times these types of scenarios occur. NSVRP has monitored online salvage auctions for several years. Nearly every single online salvage auction that NSVRP has monitored periodically offers severely damaged cars with inexplicably clean titles and many are purchased at these auctions and resold with undisclosed prior damage. In many cases, these vehicles are resold to resellers who may have no idea of the prior damage history when selling the vehicle to the consumer.

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