



## NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

2521 BROWN BOULEVARD  
ARLINGTON, TEXAS 76006-5203

---

817.640.3838 | FAX 817.649.5866  
WWW.NIADA.COM

March 17, 2015

### Submitted Electronically

Federal Trade Commission  
Office of the Secretary  
600 Pennsylvania Ave.  
Suite CC-5610 (Annex A)  
Washington, D.C. 20580  
Electronic address (<https://ftcpublic.commentworks.com/ftc/usedcarrulenprm/>)

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

The National Independent Automobile Dealers Association (“NIADA”) submits the following comments to the Federal Trade Commission (“FTC” or “Commission”) regarding its Supplemental Notice of Proposed Rulemaking (“SNPRM”) and request for public comment on proposed changes to the Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”).

### A. Introduction

NIADA is among the nation's largest trade associations representing the used motor vehicle industry comprised of more than 38,000 licensed used car dealers. Since 1946, NIADA has represented the voice and interests of used car dealers at the federal level in Washington, D.C. Coupled with its state association network across the country, NIADA’s grass-roots framework provides a dual layer of advocacy unmatched in the used motor vehicle industry.

For 68 years, NIADA has engineered programs and leveraged technology to fulfill its mission to advance, educate, and promote the independent, used car dealer. NIADA stands tall for its members who subscribe to a strict Code of Ethics of duty, honor and integrity and who believe in the advancement of small business in support of the free-market system

NIADA's members include dealers that sell used vehicles wholesale, retail, and buy here pay here (BHPH). Many of NIADA’s dealer members own and operate small businesses as defined by the Small

Business Administration with almost 50 percent of those members employing five or fewer employees. Significantly, more than 40 percent of these dealers have been in business longer than 20 years.

After having reviewed the proposed rule, NIADA offers the following comments.

## B. Procedural Background

In 2008, the Commission began a systemic review of the Used Car Rule. The Commission posed a series of questions in a Regulatory Review Notice and solicited comments from interested parties. In response, the Commission indicated that it received comments from 21 commenters addressing three categories of specific questions related to the Spanish version of the Buyers Guide and whether a bilingual guide would be beneficial; the list of systems disclosed on the rear of the Buyers Guide; and whether the Buyers Guide could better disclose third party warranties.<sup>1</sup>

Notwithstanding the fact that the Regulatory Review Notice did not specifically pose the question, several comments suggested the Commission should impose a requirement on dealers to provide motor vehicle history information, title information, damage history, and disclose other known vehicle defects through the Buyers Guide.<sup>2</sup>

After reviewing comments provided in response to the Regulatory Review Notice, in December 2012, the Commission issued a Notice of Proposed Rulemaking (“NPRM”) in which it proposed to amend the Used Car Rule by making four changes: 1) adding boxes to the back of the Buyers Guide where dealers would have the option to indicate manufacturers’ and other third-party warranties; 2) adding 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; 3) adding catalytic converters and airbags to the List of Systems on the back of the Buyers Guide; and 4) adding a statement in Spanish to the English Buyers Guide directing consumers who cannot read the Buyers Guide in English to ask for a copy of it in Spanish.<sup>3</sup> The Commission again invited comments from interested parties on these proposed changes.

NIADA submitted comments to the Commission in response to the NPRM raising a few concerns, but overall expressing its pleasure that the FTC had decided to retain the Rule without significant change. NIADA still maintains that position as it relates to the proposals contained in the NPRM.

After having reviewed comments filed in response to the NPRM, this Commission released a Supplemental Notice of Proposed Rule Making (“SNPRM”) that drastically alters and significantly worsens what was proposed in the NPRM, let alone that which currently exists in the Rule. NIADA appreciates the opportunity to express its concerns and otherwise provide comments to the proposed changes contained in the SNPRM as outlined below.

---

<sup>1</sup> 77 FR 74746 (Dec. 17, 2012).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

C. Mandating that Dealers Provide Vehicle History Reports

One of the core proposed changes in the SNPRM is a modification to the Rule that would require dealers who have obtained a vehicle history report on an individual vehicle to indicate on the Buyers Guide that they have obtained a report and will provide a copy of the report to consumers upon request. The amended Buyers Guide would contain a box that dealers must check if they have obtained a vehicle history report. It also contains language adjacent thereto notifying consumers that dealers will provide a copy of the report upon request (referred to by the Commission as the “SNPRM Vehicle History Approach”).

In recommending its SNPRM Vehicle History Approach, the Commission suggests that this approach will prevent deception in the market for used vehicles, will impose minimal burdens upon used car dealers, and will provide consumers with valuable information about used vehicles.<sup>4</sup> NIADA wholly opposes this approach and rejects the rationale the Commission relied upon in support thereof.

i. The Purpose of the Used Car Rule and Buyers Guide is to Disclose Warranty Information

By adopting the SNPRM Vehicle History Approach, the Commission is distracting from and running afoul of the express purpose of the Used Car Rule. The Rule was promulgated pursuant to authority given the Commission from Congress under 15 U.S.C. 2309(b). That section directed the Commission to initiate “a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles.”<sup>5</sup>

The plain language of the statute limits the rulemaking to dealing with warranties and warranty practices. As such, the Rule and the Buyers Guide were never meant to be a title history, vehicle history, damage disclosure document, recall disclosure document, or be-all-end-all document for disclosing all things about a specific vehicle.

When it released the NPRM, the Commission expressly recognized and acknowledged to the public that the purpose of the Buyers Guide is to provide a uniform method for disclosing warranty information about a particular vehicle.<sup>6</sup> However, in the two intervening years between the release of the NPRM and SNPRM, the Commission has completely reversed course ignoring its own prior statement as well as the statutory purpose of the Rule by including requirements in its proposal that have no relationship to warranties. Vehicle history is not warranty and warranty practices.

NIADA encourages the Commission to stay true to the statutory framework imposed by Congress and limit the Used Car Rule to the “dealing with warranties and warranty practices.” It was never intended for anything else.

---

<sup>4</sup> 79 FR at 70808 (Nov. 28, 2014).

<sup>5</sup> 15 U.S.C. 2309(b)

<sup>6</sup> 77 FR at 74747 (Dec. 17, 2012).

ii. The Lack of a Definition of Vehicle History Report

Not only has the Commission strayed from Congressional directive by proposing the SNPRM Vehicle History Approach, the Commission's proposal now leaves the dealer community asking a critical question – what is a vehicle history report? Remarkably, the proposed Rule change does not define the term. Furthermore, the language proposed by the Commission for inclusion on the face of the Buyers Guide offers no clarification as to what constitutes a vehicle history report. Absent a clearly and concisely defined term, the Commission is creating and fostering an environment of regulatory uncertainty.

As the Commission notes in the SNPRM, vehicle history information is available from a variety of public and private resources. The Commission lists some of those resources as state governments, the Department of Justice through its National Motor Vehicle Title Information System (“NMVTIS”) database, and commercial vehicle history providers such as CARFAX and Experian.<sup>7</sup> Among the potential sources of vehicle history information, these may perhaps be the most well-known but are certainly not exclusive.

Insurance companies may have information on a vehicle's history as they underwrite policies. Banks and finance companies may have history as they underwrite a loan. Service facilities generate vehicle history information every time a vehicle is repaired or routine maintenance is performed. Consumers may provide vehicle history information to a dealers when trading in a vehicle. Automobile auctions generate information about motor vehicles in an effort to assist dealers as they acquire inventory. Even these are not a comprehensive list of sources of information. However, they illustrate how broad vehicle history reporting information is.

Because vehicle history report is undefined, the Commission's proposed changes will leave dealers guessing whether they need to check the box and what information is required to be provided to consumers upon request. The interpretation dealers have may very well differ from that of the Commission's enforcement staff, which may differ from that of consumers and their attorneys. Such differences of opinion often end up in courtrooms across the country, an undesirable result for the dealer community.

iii. Information Contained In Vehicle History Reports Will Be Incorporated Into the Contracts Subjecting Dealers to Liability for Information That Is Not Their Own

Even if the Commission adopted a clear and concise definition of vehicle history report, the SPNRM Vehicle History Approach will subject dealers to potential liability for information that is not their own and over which they have no control. The Used Car Rule states,

(b) *Incorporated into contract.* The information on the final version of the window form is incorporated into the contract of sale for each used vehicle you sell to a consumer. Information on the window form overrides any contrary provisions in the

---

<sup>7</sup> 79 FR at 70805 (Nov. 28, 2014).

contract of sale. To inform the consumer of these facts, include the following language conspicuously in each consumer contract of sale:

The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale.<sup>8</sup>

The Rule contains additional language that prohibits dealers from making any statements or taking any action that would alter or contradict the fact that the information on the Buyers Guide is incorporated into the contract.<sup>9</sup>

We are concerned that the inclusion of language on the Buyers Guide that dealers must provide a vehicle history report upon request integrates that vehicle history report information, whatever it may be, into the four corners of the Buyers Guide form. Under 16 CFR 455.3(b), the information on the Buyers Guide (to include vehicle history report information) is incorporated into the contract, and pursuant to 16 CFR 455.4, cannot be altered or contradicted by anything the dealer would do to exclude it. Thus, by recommending the SNPRM Vehicle History Approach, the Commission is opening the door for dealers to be liable for any information contained in a vehicle history report provided to the consumer upon request simply because a box is checked on the Buyers Guide form.

Not only is information on a vehicle history report not the dealer's, as we have mentioned in the past, vehicle history reports are not always accurate, nor is the information contained therein always the most current information available. Some reports may not represent a vehicle's entire history due to unreported repairs, poor reporting procedures and title different brands/classifications in each state. The SNPRM Vehicle History Approach now makes the dealer liable for the inaccuracy of this information.

Furthermore, the inconsistency in information between various vehicle history reports raises concerns over dealer liability. Certain reports may classify information one way, while another report may classify it entirely different. We are concerned that because the Rule plainly incorporates vehicle history reports into the contracts as a result of the Commission's proposal, dealers will face liability by pulling and providing one report as opposed to another.

The Commission recognizes the concerns about dealer liability and attempts to address them by simply stating that dealers will not be required to obtain a particular type of vehicle history report or obtain a report from a specific vendor. The Commission also seems to sweep away these concerns by stating that vehicle history reports often have disclaimers about the limits of data in them.

However, the Commission's attempt to assuage the dealers' liability concerns ignores the Commission's own recognition that a myriad of potential reports exist, which could be subject to dealer

---

<sup>8</sup> 16 C.F.R. §455.3.

<sup>9</sup> 16 C.F.R. §455.4.

disclosure. Certain reports may have that disclaimer language, others may not. This is especially likely given the absence of a clear and concise definition of vehicle history report.

More importantly, the Commission's position ignores the plain language of the Rule. Dealers cannot do anything to alter or contradict the fact that the information in the Buyers Guide is incorporated into the contract. Once the box is checked and the dealer provides the report, that dealer has incorporated that information into the contract. Language disclaiming the veracity of the data that may exist in the report does not provide any immunity for liability once that box on the Buyers Guide is checked.

The SNPRM Vehicle History Approach unnecessarily hoists this liability on dealers with no way to protect themselves particularly when they do not own or control, nor can they change the information in a vehicle history report.

iv. The SNPRM Vehicle History Approach Does Nothing To Prevent Deception and Will Dissuade Consumers From Researching Vehicles On Their Own

NIADA shares the Commission's stated desire to prevent deception in the used car marketplace. There is no place for unfair, deceptive, or abusive practices in the sale of a used motor vehicle to consumers whether that transaction occurs between a dealer and consumer or in a private party consumer to consumer sale. NIADA's Code of Ethics mandates its dealers treat customers with integrity and honor. NIADA will gladly work with the Commission on rooting out any unfair or practices that lead to consumer harm.

Notwithstanding this shared goal, NIADA disagrees with the Commission's suggestion that the SNPRM Vehicle History Approach will prevent deception. NIADA is concerned that the Commission's proposed changes will actually dissuade dealers from obtaining any type of vehicle history report or limit the types of information they receive. Given the potential for liability as explained above, dealers may not want to assume the risk that they either did not provide what they were required to, or more likely, will not want to run the risk of being held responsible for the information contained in the report. Lawsuits between dealers and consumers over information contained in vehicle history reports is frequent enough now as it is. This proposal will only lead to more of those types of suits.

We also believe that this proposal will do nothing to dissuade unscrupulous dealers from engaging in nefarious conduct if they so desire. Devious dealers can elect to hide vehicle history reports even if they have them. Moreover, those untoward dealers may engage in vehicle history report shopping – looking for a vehicle history report that presents their vehicle in the best light particularly given the inconsistency that can often be found among the myriad reports.

Additionally, NIADA has previously expressed its concern that requiring dealers to provide vehicle history reports would be counterproductive to the FTC's stated objective to encourage consumers to do their own analysis and investigation on the car and not rely upon dealers. By mandating dealers provide the vehicle history reports, even if it is through an approach such as recommended in the SNPRM, we believe that consumers will rely upon the information contained in those reports without doing their

own vehicle inspection.

v. Other Unaddressed Practical Considerations

The SNPRM approach has raised several other considerations that are not addressed in the proposed rulemaking. Dealers have costs associated with pulling a commercial vehicle history report. Some of those costs can be significant. Dealers will naturally want to pass those costs on to the consumer. Is this permissible? Is it permissible even if a consumer does not ultimately purchase the car?

Additionally, the question arises at what point would the vehicle history report need to be provided? Given the expense involved, it would be counterproductive and expensive to require dealers to provide reports to every consumer that walks on the lot and feigns lukewarm interest in purchasing a car.

NIADA recommends that the Commission abandon the SNPRM Vehicle History Approach and return to what was outlined in the original NPRM – advising consumers that vehicle history reports are available and directing them to the proposed website. This approach eliminates the concerns addressed above and yet still provides consumers with the opportunity to acquire independent information about any vehicle they are truly interested in acquiring. As we stated in earlier comments, this is an acceptable compromise.

D. As-Is Statement

In the SNPRM, the Commission states its desire to amend the “As-Is” statement on the Buyers Guide to make the statement easier to read and to improve consumers’ understanding about warranty rights without changing its meaning. While we support the Commission’s desire to ensure the As-Is statement accurately reflects the correct legal interpretation of the term, NIADA objects to the Commission’s attempt to change the statement to anything other than a restatement of a legal definition.

While the first and second sentences in the SNPRM “As-Is” Statement may accomplish that purpose, the third does not. One is hard pressed not to read the third sentence as anything other than provocation of consumers to search for dealer misconduct whether it exists or not. It does not enhance consumer understanding of their warranty rights in an As-Is transaction. Accordingly, it should be removed.

E. Non-Dealer Warranty Boxes

NIADA does not object to moving the proposed non-dealer warranty boxes from the back of the Buyers Guide to the front of the Guide as proposed in the SNPRM.

F. Questions Concerning the Proposed Modifications of the Rule

In addition to the specific comments expressed above, NIADA submits the following answers to the questions the Commission posed in the SNPRM.

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?

Response: No. See discussion above.

b. Do used vehicle dealers typically obtain vehicle history reports for vehicles that they offer for sale? How prevalent is this practice? How prevalent is the practice among franchise dealers? How prevalent is the practice among independent dealers? Provide any studies, surveys, or other data that support your answers.

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Even if the Commission is implying vehicle history report references a product offered by a commercial provider such as CARFAX or Experian's AutoCheck, answering this question with supporting studies and data is virtually impossible. NIADA is not in a position to respond as to the prevalence among franchise dealers. With respect to independent dealers, NIADA can only offer supposition that the majority of independent dealers do not.

c. Do used vehicle dealers who obtain vehicle history reports typically make information from the reports available to consumers? If so, how? Do dealers make the reports available online? How prevalent is the practice among franchised used vehicle dealers of making vehicle history report information available to consumers? How prevalent is the practice among independent dealers? Provide any studies, surveys, or other data that support your answers.

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Even if the Commission is implying vehicle history report references a product provided by a commercial provider such as CARFAX or Experian's AutoCheck, providing a concrete answer to this question with supporting studies and data is virtually impossible. NIADA is not in a position to respond as to the prevalence among franchise dealers. With respect to independent dealers, NIADA does not know how frequently dealers who access such reports provide them to consumers.

d. Would a proposed Rule requiring dealers to provide consumers with a copy of a vehicle history report that a dealer has obtained on a vehicle be more or less likely to prompt dealers to obtain vehicle history reports? Would dealers who currently obtain vehicle history reports be more or less likely to obtain the

reports if the Commission requires dealers to provide copies to consumers of any reports that the dealers obtain? Why or why not?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. If the Commission is implying vehicle history report references a product offered by a commercial provider such as CARFAX or Experian's AutoCheck, NIADA believes that a proposed rule requiring dealers to provide such a report to consumers would dissuade dealers from acquiring reports. See comments above for further explanation.

e. How prevalent is the practice among used vehicle dealers of obtaining vehicle history reports and failing to disclose title brands or other significant problems documented in those reports? How prevalent is the practice among franchised dealers? How prevalent is the practice among independent dealers? Would the proposed Rule requiring dealers to provide a copy of vehicle history reports that they have obtained reduce the prevalence of dealer failures to disclose information contained in vehicle history reports? Provide any studies, surveys, or other data that support your answers.

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. If the Commission is implying vehicle history report references a product offered by a commercial provider such as CARFAX or Experian's AutoCheck, NIADA believes that it is a prevalent practice among all dealers to disclose title brands and other material information as they are legally obligated to do so.

f. Does the Buyers Guide box and accompanying text concerning vehicle history reports in Figures 1 and 2 clearly indicate to consumers that the dealer has obtained a vehicle history report and will provide a copy upon request? If not, identify alternative means to make the disclosure.

Response: Absent a clear and concise definition of vehicle history report in the Rule, it does not.

g. Would the lack of a mark in the box concerning vehicle history reports clearly convey that the dealer has not obtained a vehicle history report and therefore is not required to provide a copy? If not, provide alternative ways in which a dealer could signify on the Buyers Guide that the dealer has not obtained a vehicle history report that it can provide upon request.

Response: Absent a clear and concise definition of vehicle history report in the Rule, it does not.

h. Would the following statement on the proposed Buyer Guides in Figures 1 and 2 benefit consumers?

Regardless of whether the box is checked, the FTC recommends that you obtain a Vehicle History Report. For information on how to obtain a vehicle history report, how to search for safety recalls, and other topics, visit the Federal Trade Commission at [ftc.gov/used cars](http://ftc.gov/used cars). You will need the vehicle identification number (VIN) shown above to make the best use of the resources on this site.

Response: NIADA believes others are in a better position to provide a response to this question.

i. Will the SNPRM proposal to require that dealers who have obtained vehicle history reports indicate that they have the reports, and will provide copies upon request, make dealers more or less likely to obtain vehicle history reports, or have no impact on whether dealers obtain vehicle history reports?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. If the Commission is implying vehicle history report references a product offered by a commercial provider such as CARFAX or Experian's AutoCheck, NIADA is concerned the SNPRM will make dealers less likely to obtain vehicle history reports. See comments provided above for further explanation.

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

Response: No. The Rule was never intended to be more than a warranty disclosure process. Vehicle history reports should not be addressed in the Rule.

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?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, the Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule.

l. 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?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, the Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule.

m. Should the Commission permit dealers to provide consumers with electronic access to vehicle history reports as an alternative to providing consumers with printed reports? What mechanisms should dealers be permitted to use?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, the Rule was never intended to

be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule.

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

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, the Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule.

o. Once a dealer views a vehicle history report, should the Commission require that that 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?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, the Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule.

p. What barriers, if any, prevent effective enforcement of the proposed requirement that dealers indicate on the Buyers Guide whether they have obtained vehicle history reports? What measures could FTC staff take to detect violations of a requirement that dealers provide copies of vehicle history reports upon request? What records, if any, do suppliers of vehicle reports maintain that would demonstrate whether individual used vehicle dealers had previously viewed or obtained vehicle history reports on individual vehicles?

Response: An obvious barrier to the effective enforcement of the proposed requirement is the lack of a clear and concise definition of vehicle history report.

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?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, the Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule.

r. What are the costs, potential liabilities, and/or benefits to dealers of requiring dealers to disclose that they have obtained vehicle history reports? Once disclosed, what are the costs, potential liabilities, and/or benefits to dealers of providing copies of the reports to consumers?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. Notwithstanding the lack of a definition, see comments provided above.

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?

Response: NIADA believes others are in a better position to provide a response to these questions.

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?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. If the Commission is implying vehicle history report references a product offered by a commercial provider such as CARFAX or Experian's AutoCheck, 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 is the same whether a report has negative history or not. The Rule should not define negative information. The Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule. If negative information is defined, it should be limited to information of a title with a brand as defined by state law.

u. What are the costs, potential liabilities, and/or benefits to consumers 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?

Response: Without a clear and concise definition of vehicle history report, a response to this question is difficult. NIADA believes others are in a better position to provide a response pertaining to the consumer costs, liabilities, or benefits to consumers. However, as stated above, the Rule should not define negative information. The Rule was never intended to be more than a warranty disclosure rule. Vehicle history reports should not be addressed in the Rule. If negative information is defined, it should be limited to information of a title with a brand as defined by state law.

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

Response: As we have previously stated, the NPRM approach provides the most sensible approach and is an acceptable compromise in providing consumers information about vehicle history reports while encouraging consumers to get an independent inspection. This approach also limits any unnecessary and unfair liability for the dealers and is least costly and burdensome to dealers. Furthermore, this approach does not distract from the specific statutory purpose of the rule – disclosing warranty information. The FTC should reject any other approach and return to its original proposal in the NPRM. For additional comments, see above.

ii. SNPRM Vehicle History Approach

Response: See comments above for stated concerns with this approach.

iii. AB 1215 Vehicle History Approach

Response: When introducing this approach in the SNPRM, the Commission neglected to include a very important detail of AB 1215. The statute as passed by the California legislature and signed by the governor provided dealers with a safe harbor from liability for any information contained in the NMVTIS report. The AB 1215 approach is neither complete nor workable unless the dealers received immunity from the information contained in the report.

iv. IA AG Vehicle History Approach

Response: We agree with the Iowa Attorney General that under state unfair and deceptive trade practices laws, dealers are required to disclosure negative title information to consumers. We recognize the importance of such disclosure and fully support those state laws mandating dealer disclosure of negative title information. However, NIADA opposes the Iowa Attorney General's approach through the Used Car Rule and Buyers Guide.

As has been repeatedly referenced, the Rule's statutorily stated purposed is to be a warranty disclosure process. The Buyers Guide is intended to be a warranty disclosure document. Adding additional non-warranty information distracts from that purpose and diminishes the importance of the disclosed warranty information. The fact that state law mandates dealers disclose information on branded titles through other methods or processes is sufficient.

The Iowa AG suggests that a checked box on the Buyers Guide would indicate that a vehicle's title will carry one or more brands identified as Salvage, Prior Salvage, Rebuilt, Remanufactured, Flood, Lemon Law or similar brand. However, this recommendation is problematic in a federal document when there are no defined federal title brand classifications.

These brands are defined as a matter of state laws, which vary widely. Not every state has the specific title brand categories in the Iowa Attorney General's proposal. Even if states have similar brands, they often have consistent definitions when similar classifications are used.

Inasmuch as title branding and title disclosure is a matter of state law, it should be left to the processes already dictated by the laws of a particular state.

v. ADD Vehicle History Approach

Response: NIADA could agree to that portion of this proposal referencing [www.vehiclehistory.gov](http://www.vehiclehistory.gov) rather than a webpage on [www.ftc.gov](http://www.ftc.gov) dedicated to vehicle history information. However, NIADA objects to making the Buyers Guide anything other than a warranty disclosure document. Thus, NIADA does not feel including a QR code with a link to a vehicle history report on the Buyers Guide is appropriate.

vi. NC AG Vehicle History Approach

Response: We believe that the Commission has misstated the North Carolina Attorney General's proposal. The Commission's SNPRM states that the North Carolina Attorney General "recommended that the Commission require dealers to disclose vehicle history report information on the Buyers Guide...."<sup>10</sup> The North Carolina Attorney General's comment submitted to the Commission on March 13, 2013 actually requests that the Commission "require vehicle title history information be included in the used car Buyer's Guide...."<sup>11</sup> This is an important distinction and is not nearly as broad a request as the Commission portrays.

Nevertheless, the NC AG Vehicle History Approach should also be rejected for reasons previously stated. The Rule and the Buyers Guide are intended to be a warranty disclosure process, not a vehicle title history disclosure process. Dealers are required by the laws of the states, be they specific vehicle titling statutes or state unfair and deceptive acts and practices statutes, to disclose any vehicle title brand. Failure to do so would undoubtedly constitute common law fraud as well. Because state law requires this title brand disclosure through other methods, it is unnecessary to add a duplicative disclosure process on the Buyers Guide that would further dilute it from its intended purpose.

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.

Response: NIADA is not aware of any studies or surveys responsive to this request.

---

<sup>10</sup> 79 FR at 70806 (Nov. 28, 2014).

<sup>11</sup> Comments from North Carolina Attorney General in response to NPRM dated March 13, 2013.

“As Is” Statement on Buyers Guide

2. The Commission proposes changing the statement on the Buyers Guide that explains the meaning of an “As Is” sale. The Commission proposes:

**THE DEALER WILL NOT PAY FOR ANY REPAIRS.** The dealer does not accept responsibility to make or to pay for any repairs to this vehicle after you buy it regardless of any oral statements about the vehicle. But you may have other legal rights and remedies for dealer misconduct.

(SNPRM “As Is” Statement)

a. Does the SNPRM “As Is” Statement clearly and accurately describe the meaning of “As Is” in a used vehicle sale in which dealers disclaim implied warranties? If not, provide alternative means to convey that information to consumers.

Response: No. As discussed above, the statement should be limited to a description and legal definition of “As Is” and no other information should be provided. The first and second sentences are sufficient in defining “As Is.” The third sentence is wholly unrelated to the definition of “As Is” and should be removed.

b. The Commission also invites comments on the following alternative descriptions of “As Is” proposed in the comments. Which, if any, of the following alternatives more clearly and accurately describes the meaning of “As Is” than the “As Is” statement proposed by the SNPRM? Provide any data, consumer surveys, or evidence that supports your comments:

i. **AS IS—NO DEALER WARRANTY. DEALER DENIES ANY RESPONSIBILITY FOR ANY REPAIRS AFTER SALE**

(CARS “As Is” Statement)

Response: NIADA believes this statement is a sufficient description of “As Is.”

ii. **THE DEALER IS NOT PROVIDING A WARRANTY.** The dealer does not agree to fix problems with the vehicle after you buy it. However, you may have legal rights if the dealer concealed problems with the vehicle or its history.

(IA AG “As Is” Statement)

Response: See comments related to SNPRM “As Is” Statement.

iii. **THE DEALER WON'T PAY FOR REPAIRS.** The dealer does not agree to pay for the vehicle's repairs. But you may have legal rights and remedies if the dealer misrepresents the vehicle's condition or engages in other misconduct.

(NC AG “As Is” Statement)

Response: See comments related to SNPRM “As Is” Statement.

iv. AS IS—NO WARRANTY. YOU WILL PAY ALL COSTS FOR ANY REPAIRS. Ask for all representations about the vehicle in writing.

(East Bay “As Is” Statement)

Response: NIADA believes this statement would be clearer and more accurate by indicating that the dealer is not providing a warranty.

#### Non-Dealer Warranties

3. The Commission proposes to amend the Rule by providing boxes on the front of the Buyers Guide to allow, but not require, dealers to indicate the applicability of non-dealer warranties including manufacturer and other third-party warranties. Does the proposed method of disclosure effectively convey to consumers that dealers may, but are not required, to disclose non-dealer warranties that are applicable to a vehicle?

Response: Yes.

4. Does the lack of a checkmark in any of the manufacturer or third-party warranty boxes effectively communicate that the dealer is not providing any information about whether a manufacturer or other third-party warranty applies?

Response: Yes.

5. Would check marks in multiple boxes effectively communicate that multiple third-party warranties apply?

Response: Yes.

6. Does the Buyers Guide statement that “[t]he manufacturer's original warranty has not expired on the vehicle” effectively explain to consumers that an unexpired manufacturer's warranty applies? Would the statement prompt consumers to seek additional information about the scope of coverage of the unexpired warranty?

Response: NIADA believes the statement to be effective and could prompt additional consumer inquiry.

III. Conclusion

While we appreciate the Commission's desire to incorporate a bevy of previously submitted comments into its latest proposal, the recommended amendments in the SNPRM related to vehicle history reports miss the mark. Incorporating vehicle history information, into the Rule and Buyers Guide, particularly when no one has any idea what vehicle history report means, does nothing more than create regulatory uncertainty and subject dealers to unnecessary liability.

We urge the Commission to return to the NPRM Approach in referencing vehicle histories. This approach will provide consumers with information pertaining to vehicle histories without placing undue risk and burden on dealers. Moreover, it will protect the stated statutory purpose for the Rule and not try to make the Rule and the Buyers Guide something it was never intended to be.

We appreciate the Commission's willingness to receive comments on this proposal. NIADA welcomes the opportunity to engage in further discussions on this proposal and our comments thereto.

At Your Service,



Steve Jordan  
NIADA  
Executive Vice President



Shaun K. Petersen  
NIADA  
Outside Legislative & Regulatory Counsel