CENTER FOR AUTO SAFETY

1825 Connecticut Avenue, NW Suite 330 Washington, DC 20009-5708 (202) 328-7700

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Re: Used Car Rule Regulatory Review, Project No. PO87604

The Center for Auto Safety (CAS) very much appreciates the time and commitment of the Commission and Staff in producing this Supplemental Notice of Proposed Rulemaking (SNPRM) to respond to the issues raised in the comments filed on the 2012 NPRM on the Used Car Rule. We believe the efforts were worthwhile and improvements have been made in the proposals in the SPRM. We believe that significant further improvements are still needed in order to bring the Used Car rule into the 21st century.

Vehicle History Disclosure

Contrary to Implications in the SNPRM, CAS Does not Prefer the SNPRM Approach to Vehicle History Report Disclosure

Perhaps CAS should be flattered that the Commission has proposed its suggestion that dealers give consumers copies of vehicle history reports they've obtained, but we find ourselves more disappointed than flattered. From reading the SNPRM one would think CAS had expressed its preference for the "CAS proposal" over all the other approaches to vehicle history disclosure discussed in the notice. That is not the case. We prefer an approach that requires the disclosure of NMVTIS information to consumers and clearly noted that in the last sentence of the introductory section of our comments on the 2012 NPRM.[1] We did not have the resources to include in our comments approaches or information regarding required disclosure of NMVTIS information that would add to that presented by other commenters. Clearly, our preference was and is that our suggestion supplement, not replace an approach that includes mandatory disclosure of NMVTIS information.[2]

Given that context of our proposal, we believe it was inappropriate for the SNPRM to present it as our stand alone proposal for vehicle history disclosure in the Used Car Rule. Even so, that wouldn't have caused a major problem if the Commission had simply put the CAS "approach" on a list for public

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[1] "At this point we should be engaging in reasoned discourse on the best way to disclose NMVTIS information on vehicles and thus take the Used Car Rule into the 21st century; instead we are compelled to comment on far more mundane issues to keep the Rule from going backwards." Center for Auto Safety Comments, March 13, 2013, p. 2.

[2] Since the SNPRM requests specificity regarding approaches, our preferred vehicle history disclosure approach is something of a hybrid between AB 1215 and the IA AG's approach: the mandatory NMVTIS history report of AB 1215 with a disclosure box on the Buyers guide more similar to the IA AG's approach. We envision the information about vehicle histories on the Buyers Guide and FTC websites in this approach. If this approach is supplemented by our suggestion that dealers provide consumers upon request copies of vehicle history reports they've obtained, requesting consumers would always receive a NMVTIS report, along with reports of other providers that the dealer may have obtained.

comment, along with other approaches to vehicle history disclosure highlighted in the NPRM, e.g., the AB 1215 and IA AG approaches. Instead, the Commission has converted the mischaracterized CAS suggestion into a proposed rule, guaranteeing that it will receive far more attention and comments than will the alternative approaches buried in the details of the SNPRM. This scenario causes us concern that the Commission's guiding principle in this rulemaking has been to impose no more than the most minimal burden on dealers, instead of providing key information resulting in better purchasing decisions by consumers without imposing unreasonable burdens on dealers.

The SNPRM Approach Faces Significant Problems

Having made clear that the SNPRM approach to vehicle history disclosure is quite different than the CAS approach, we turn to some of the problems with the SNPRM approach. As consumers are becoming more used to the concept of vehicle history reports, more and more dealers are providing them to consumers with or without a request. Unfortunately, some less than scrupulous dealers are using them to deceive, not to assist consumers. Just as savvy lawyers engage in forum shopping, these savvy and less than scrupulous dealers engage in vehicle history report shopping. For example, if an updated report from a provider shows more issues with a vehicle than an older report from the same provider, the older report is the one provided to consumers. Similarly, if the history report of one provider shows problems with a vehicle that those of other providers don't, the report presented to consumers would be from one of the latter providers. For example, a D.C. area dealer's alleged M. O. was to purchase vehicles that the auction disclosed had sustained significant damage. The dealer would provide consumers a copy of a vehicle history report from a provider that, at least at the time, did not pick up the auction damage reports in its data base. Provider reports may become increasingly inclusive, but it is always going to be possible to play this game because some provider will be behind in some aspect.

The questions in the SNPRM indicate the staff has considered the potential for such abuses. Our answers to questions 1 k & l are: an unequivocal yes, dealers who have obtained multiple vehicle history reports should have to provide all, even if the request is for just one, with the only exception we would consider being that a dealer need only provide the most recent report if it has obtained multiple reports from the same provider. Our answers to questions 1 o & q are: yes, once a dealer views a history report, it should be required to make the report available as long as it possesses the vehicle, and unless a provider does so for them dealers should be required to create and maintain records when they obtain or view vehicle history reports.[3] We note that the provisions that would implement our above answers need to apply to any vehicle history report a dealer provides a consumer, whether upon request or not. Otherwise dealers could circumvent the Rule by providing history reports without a request but not providing copies of all they've obtained, for example.

To sum up CAS's positions regarding vehicle history disclosure, we prefer a hybrid of the AB 1215 and IA AG approaches, with mandatory NMVTIS reports. If obtaining NMVTIS reports isn't mandated, we prefer the IA AG's approach, with an improved disclosure box. We believe dealers will still gain appropriate knowledge to disclose in this approach even if they aren't required to obtain NMVTIS reports. Our suggestion that dealers provide vehicle history reports to consumers upon request can

[3] As to question 1 j, yes, the Rule needs to define "Vehicle History Report" and the staff may need to do at least informal certification of vehicle history report providers.

supplement either of our preferred approaches. Implementing that suggestion properly will require very well-drafted controls on dealer practices regarding vehicle history reports, which would also be appropriate to adopt even if the report upon request approach isn't adopted.

Non-dealer Warranty Disclosure

We continue to believe the main issue with disclosure of non-dealer warranty coverage is that it needs to be made mandatory, especially that factory warranty coverage hasn't expired, as we advocated in our comments on the 2012 NPRM.

If these disclosures aren't made mandatory, we don't see sufficient reason to move these disclosures onto the front of the Buyers Guide. The SNPRM again estimates that if these disclosures are optional they will be made in only 25 percent of used car sales.[4] In our view, space on the front of the Buyers Guide is at too much of a premium to give up for disclosures that will be made only 25 percent of the time. On the other hand, if the disclosures are made mandatory, they should be on the front of the Buyers Guide because they will be made much more often.

Let us briefly review reasons for making disclosure of remaining factory warranty coverage mandatory. In response to the dealers' claim they don't have readily available information on the factory warranties, our comments on the 2012 NPRM noted The Official Warranty Guide, http://www.jlwarranty.com/owg.php, published by JL Warranty, Inc. This publication gives detailed information on manufacturer warranties going back ten model years. It costs just $24 in book form and $19.99 for a smartphone app, costs the publisher claims a dealer will more than recover by getting the manufacturer to cover problems the dealer may not have previously realized were under warranty. Among the highlights of the information in the publication is that Hondas and Acuras in the 2005 and 2006 model years had lifetime seat belt warranties,[5] a continuation of a policy that began in 1987, so dealers can disclose that every vehicle of those model years has factory warranty coverage remaining. If, despite the ready availability of such thorough information, the Commission or Staff remain concerned that dealers still have insufficient information to disclose factory warranties on some vehicles or in some situations, a formal or informal exception can be established.[6]

We forwarded to the Commission, shortly after the comment period on the 2012 NPRM had expired, a consumer complaint filed with CAS highlighting the economic harm when factory warranties aren't disclosed. Since the record is again open, we have attached a copy of that complaint.[7]

Whether or not disclosure of third party warranties is mandatory, the Commission needs to change the language on the Guide that the manufacturer's warranty coverage period has not expired. To help show why, consider a dealer selling a 2006 Honda Civic LX. The only components still within the relevant factory warranty period on that car are those in the seat belt assembly; nevertheless, it would be

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[4] 79 FR at 70814.

[5] Seat belts are covered for 15 years/150,000 miles in 2007-2015 models.

[6] For example, if the Commission is impressed with the dealers' argument they don't know when coverage expires base on time because they can't get the in-service date, a solution is to create an exception whereby once the difference between the model year of the vehicle in question and the current model year reaches one year fewer than the longest factory coverage on the vehicle, disclosure of factory coverage is no longer required.

[7] We have redacted personal information of the consumer. If you wish more information, please let us know.

perfectly appropriate under the Rule for the dealer to check that the Manufacturer's Warranty Still Applies. Question 6 in the SNPRM asks the wrong question in this situation. The relevant question is whether the language on the Guide gives consumers sufficient notice of the situation so they're not stunned when they later find out only the seat belts are covered. The answer is a resounding "no."

Part of the reason the disclosure is inadequate is that for many consumers (and probably dealer personnel, as well) "manufacturer's warranty" brings to mind the basic (sometimes called bumper to bumper) warranty that covers essentially the entire vehicle. That tendency is accentuated by the disclosure using the phrase "on the vehicle." The later language about asking the dealer doesn't change the deceptive nature of the core disclosure in this situation. Moreover, Staff know full well that most used car dealers do not have a copy of the factory warranty for most vehicles on their lots and the salespeople probably won't be able to explain anything helpful about the warranties.

We submitted language to try to address this in our comments on the 2012 NPRM, but it's clear staff wasn't impressed by it and we're not wed to it. CAS is fine with deferring to Staff's drafting expertise. They key is to use language to make it clear a significant portion of the vehicle may not be within the relevant warranty period. This is probably also the time to address dealers' stated concerns about saying the warranty still applies. They have said they don't know if the warranty applies because, for example, it could have been voided for some reason. It's probably better to refer to being within the warranty period.

As-is Language

CAS believes the SNPRM's new as-is language for the appropriate version of the Buyers Guide is a significant improvement and appreciates the Commission's responsiveness on this issue. We still share some of the same concerns as other commenters, however, and suggest the Commission strongly consider the new suggestions being submitted by some commenters.

Recalls

The CAS position on recalls is simple. It is an unlawful trade practice under the FTC Act for a dealer to sell a vehicle with an open safety recall and the Commission should be using all its rulemaking and enforcement power to end that practice.[8]

Respectfully submitted,

Evan W. Johnson, Counsel

[8] Until the practice is ended, we suggest in response to SNPRM question 1 h that "search for safety recalls" be changed to "check for safety recalls."