



March 17, 2015

Federal Trade Commission  
Mr. Donald S. Clark  
Office of the Secretary, Room H-113 (Annex J)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Comments of Consumers Union  
Supplemental Notice of Proposed Rulemaking  
Used Car Rule Regulatory Review  
Docket No. FTC-2014-0166  
16 CFR Part 455, Project No. P087604**

Consumers Union, the policy and advocacy division of Consumer Reports, appreciates the opportunity to comment further on the Commission's proposed rulemaking to strengthen the Used Car Rule. We appreciate the Commission considering our earlier comments. We believe the proposed changes as embodied in the Supplemental Notice will improve the usefulness and effectiveness of the Buyers Guide.

As we wrote in our July 30 and November 25, 2013, comments to the Commission, Consumers Union supports a requirement for a dealer to check NMVTIS, and other auto history databases as appropriate, for each used vehicle it offers for sale, and to prominently state, on the front of the Buyers Guide, which databases have been checked, and whether any information was found, and to furnish any prospective buyer all such information for review before purchase. However, in the absence of such a requirement, we respectfully recommend a few incremental additions that we believe would further strengthen the proposed changes without adding any significant burden on dealers, on consumers, or on the Commission.

**Vehicle History Reports**

Accepting the Commission's rationale for not specifying at this time which vehicle history reports dealers should be required to provide to prospective buyers, we nevertheless believe the information in these reports can be very useful to consumers. We recommend a few additions to the proposed changes to help ensure that consumers benefit.

The absence of a requirement that the dealer obtain and provide vehicle history reports creates several problems. We propose that the Commission make the following additional changes to better address these issues.

***Require dealer to provide means, or time, to access reports***

The absence of readily available vehicle history reports at the dealer's lot means a prospective buyer is more subject to pressure from the dealer to complete the purchase without obtaining them. A prospective buyer who has already traveled to a particular dealer's lot and who has picked out a particular used car is often ready to purchase it. He or she knows that there is less likelihood that the same make and model of this used car will be available elsewhere than there is with a new car. So leaving the dealership to check the vehicle's history, and coming back later armed with the new information, may not be a practical or realistic option.

This problem can be addressed in two ways. First, the dealer can have one or more desktop computers on hand at the lot so that prospective buyers can obtain the vehicle history reports on the spot, for free. Second, the dealer can allow a prospective buyer, at no cost, to place a car "on hold" for a reasonable period of time, perhaps 24 hours, in order to go elsewhere to obtain the vehicle history reports. This second option does not solve the convenience problem for prospective buyers – they must still make a return trip, and must wait to get the car – but it at least solves the availability problem, removing the aspect of the pressure the buyer feels that is not within the buyer's control.

We recommend that the Rule be amended to require dealers to offer one or the other of these options. Ideally, the Rule would encourage dealers to offer both. In particular, having a desktop computer available for prospective buyers to use would be a negligible addition to a dealer's overhead costs.

***Add a "no report" box and paragraph***

Having a box to check to notify prospective buyers that the dealer has obtained a vehicle history report, but having nothing to indicate that the dealer has not obtained one except the absence of a check mark, creates skewed incentives that could lead dealers not to obtain reports. If the dealer obtains the history, it may indicate problems with the car that will make it harder to sell or reduce the price the dealer can get for it. If the dealer does nothing and says nothing, a buyer may not think about the history report. The buyer may not even think it important to read a paragraph where the box is not checked – because the absence of a check mark means the paragraph doesn't apply.

To better guard against both of these risks – the creation of skewed dealer incentives, and the misdirection of prospective buyers – we recommend adding an alternative box, with the following statement:

**“IF THIS BOX IS CHECKED, THE DEALER HAS NOT OBTAINED ANY VEHICLE HISTORY REPORT FOR THIS CAR AND MAY BE UNAWARE OF ITS HISTORY.”**

We recommend that the Rule explicitly require that the dealer check one or the other of these two boxes. In conjunction with this recommended addition, we also recommend revising the first sentence in the paragraph accompanying the other box into two sentences, to read as follows:

**“IF THIS BOX IS CHECKED, THE DEALER HAS OBTAINED ONE OR MORE VEHICLE HISTORY REPORTS FOR THIS CAR. THE DEALER IS REQUIRED TO PROVIDE A COPY OF EACH REPORT TO YOU UPON REQUEST, AT NO CHARGE, BEFORE YOU BUY THE VEHICLE OR SIGN ANY CONTRACT.”**

(Changes shown in bold.) This proposed revision makes clearer that the dealer is required to check this box whenever one or more reports have been obtained, and that providing all reports obtained to the prospective buyer upon request is an additional requirement, and must happen before the car is purchased or the contract is signed.

We also recommend that the paragraph following the two alternative box paragraphs be revised to read as follows:

“Regardless of **which** box is checked **above**, the FTC recommends that you obtain a Vehicle History Report **before you buy this vehicle or sign any contract**. 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/usedcars](http://ftc.gov/usedcars). You will need the vehicle identification number (VIN) shown above, **which the dealer can show you on the car**, to make the best use of the resources on this site.”

(Changes shown in bold.) This proposed revision makes clearer that the FTC is recommending that the buyer obtain the report before agreeing to buy the car, and that the VIN is on the car and available from the dealer.

***Require that any report indicate the date it was obtained***

We recommend that any report obtained by the dealer and furnished to a prospective purchaser clearly indicate the date on which dealer obtained it. This will help both the dealer and the prospective buyer to assess whether the report is still likely to be current, or if the prospective buyer should obtain a more current one.

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Together, these proposed additional changes help ensure that prospective buyers are equally alerted in every circumstance as to the importance of checking vehicle history reports before buying a car, that prospective buyers are given a practical opportunity to obtain and check the reports, and that the new requirements do not unintentionally create skewed incentives for the dealer.

One issue raised in the earlier comments was whether the proposed changes to the vehicle history report requirements could unfairly subject dealers to liability for incorrect statements in the reports. While we did not view this as a well-founded concern even if dealers had been required to obtain the reports and furnish them, the additional changes we propose here certainly do not create any such risk. Dealers will not be responsible for the content of the reports, but only for the truthfulness of the statement in the box they have checked.

## “As Is” Statement

As a number of commenters have explained, and as the Commission has recognized, the “As Is” Statement should serve two purposes. First, it should alert prospective buyers not to rely on any oral statements suggesting that the car is in good condition, or suggesting that the dealer is making any promises to repair any problems that become apparent after the car is sold, because the dealer is in fact disclaiming all such warranties and promises. But second, it should also alert prospective buyers that the law may impose warranties and obligations despite the dealer’s efforts to disclaim and avoid them. The proposed revisions in the SNPRM do somewhat improve the “As Is” Statement, but with just a few additional words the Statement would serve these two purposes better.

We recommend revising the “As Is” Statement to read as follows:

AS IS -- NO DEALER WARRANTY

**“IF THIS BOX IS CHECKED, THE DEALER DOES NOT AGREE TO 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 **anything anyone has said** about the vehicle. **You** may still have other legal rights and remedies **that the dealer is not telling you about**, for dealer misconduct, **or for obligations the law places on the dealer. But you cannot rely on anything the dealer says about those rights or about the condition of the vehicle.**”**

(Changes shown in bold.)

## Disclosure of Warranties

We agree generally that disclosure of applicable dealer, manufacturer, and third party warranties is helpful to consumers, and we see the benefit of putting this disclosure on the front of the Buyers Guide. This disclosure would be more helpful, however, if the dealer were required to make it, after ascertaining whether other warranties do apply.

## Disclosure of Recall Repairs

In a recent petition to the Commission, we maintain that it is inherently deceptive for an auto dealer to represent that its vehicles have passed a rigorous inspection, while failing to check a vehicle’s safety recall status and ensure that safety recall repairs have been performed prior to sale. We support Commission enforcement against any dealer that engages in this kind of deceptive practice. Complementary to such enforcement is clear disclosure to prospective buyers that a vehicle has been fully repaired in compliance with all such recall notices.

We therefore recommend that a pair of statements with boxes for checkmarks be added to the Buyers Guide at an appropriately conspicuous place, similar to the pair of statements regarding vehicle history reports, indicating that the vehicle has been repaired in compliance with all recall notices, or that it is not in compliance. The statements would read as follows:

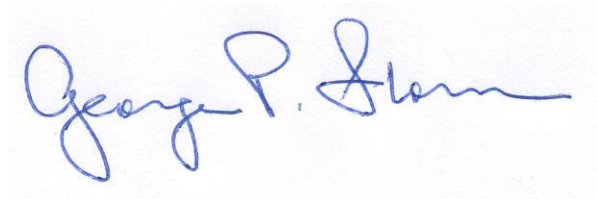
"IF THIS BOX IS CHECKED, THE DEALER HAS MADE ALL REPAIRS TO THIS VEHICLE IN COMPLIANCE WITH ANY APPLICABLE RECALL NOTICES."

"IF THIS BOX IS CHECKED, THE DEALER HAS NOT MADE THE REPAIRS TO THIS VEHICLE IN COMPLIANCE WITH ANY APPLICABLE RECALL NOTICES."

**Conclusion**

We support the proposed changes in the SNPRM, and recommend the Commission make the additional changes we propose to further strengthen the Used Car Rule and increase its usefulness to consumers and its beneficial effect on the used car marketplace.

Respectfully,

A handwritten signature in blue ink that reads "George P. Slover". The signature is fluid and cursive, with the first name being the most prominent.

George P. Slover  
Senior Policy Counsel