

U.S.C. 553(a)(1)). If this rule were delayed to allow for notice and comment and a delay in effective date, then the national security and foreign policy objectives of this rule would be harmed. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subject in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. 4601 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 12, 2015, 80 FR 70667 (November 13, 2015); Notice of January 20, 2016, 81 FR 3937 (January 22, 2016); Notice of August 4, 2016, 81 FR 52587 (August 8, 2016); Notice of September 15, 2016, 81 FR 64343 (September 19, 2016).

Supplement No. 7 to Part 744— [Amended]

■ 2. In Supplement No. 7 to part 744, remove “November 28, 2016” and add in its place “February 27, 2017”.

Dated: November 14, 2016.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

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FEDERAL TRADE COMMISSION

16 CFR Part 455

RIN 3084-AB05

Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) amends the Used Motor Vehicle Trade Regulation Rule (“Rule” or “Used Car Rule”). The Final Rule adopts the following proposals: adding a Buyers Guide statement recommending that consumers obtain a vehicle history report (“VHR”), and directing them to an FTC website for more information about VHRs and safety recalls; revising the Buyers Guide statement describing the meaning of an “As Is” sale in which a dealer offers a vehicle for sale without a warranty; adding boxes to the front of the Buyers Guide where dealers can indicate additional warranty and service contract coverage; adding a Spanish statement to the English Buyers Guide advising consumers to ask for a copy of the Buyers Guide in Spanish if the dealer is conducting the sale in Spanish (and providing a Spanish translation of the optional consumer acknowledgment of receipt of the Buyers Guide); and adding air bags and catalytic converters to the list of major defects on the back of the Buyers Guide.

DATES: This Rule is effective on January 27, 2017.

ADDRESSES: Copies of this document are available on the Commission’s website, www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: John C. Hallerud, (312) 960-5634, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe Street, Suite 1825, Chicago, IL 60603.

SUPPLEMENTARY INFORMATION:

I. Background

The Used Car Rule requires dealers to display on used cars offered for sale a window sticker called a “Buyers Guide” containing warranty and other information. The Commission promulgated the Used Car Rule in 1984, and the Rule became effective in 1985.¹ One of the principal goals of the Used Car Rule is to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. To accomplish that goal, the Rule provides a uniform method for disclosing warranty information on the “Buyers Guide.” The Rule requires used car dealers to disclose on the Buyers Guide whether they are offering a used car for sale with a dealer’s warranty and, if so, the basic terms, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the

warranty. The Rule additionally provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule requires Spanish language versions of the Buyers Guide when dealers conduct sales in Spanish. The Rule also requires other disclosures that must be printed directly on the Buyers Guide, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of fourteen major systems of a used motor vehicle and the major defects that may occur in these systems (“List of Systems”).

In July 2008, the Commission commenced its periodic regulatory review of the Rule (“Regulatory Review”) to examine its efficacy, costs, and benefits, and to determine whether to retain, to modify, or to rescind the Rule.² The Commission also asked for public comments on the Spanish translation of the Buyers Guide, the List of Systems and defects on the back of the Buyers Guide, and whether to revise the Buyers Guide by adding boxes where dealers could disclose non-dealer warranties offered by third parties.³ The Commission received twenty-five comments from twenty-one commenters, including an automobile auction firm, an automotive repair firm, an online seller of used cars, automobile dealers, individual consumers, a consumer protection attorney, a group of consumer advocacy organizations, national automobile dealers’ associations, state automobile dealers’ associations, suppliers of dealer forms, county consumer protection agencies, the National Association of Attorneys General, the International Association of Lemon Law Administrators, and the Wisconsin Department of Transportation.⁴ Among other things, commenters recommended that the Commission require dealers to provide consumers with VHRs.⁵

In December 2012, the FTC issued a notice of proposed rulemaking (“NPRM”) with proposed changes to the Rule.⁶ In the NPRM, the Commission proposed adding a statement to the Buyers Guide advising consumers about

² 73 FR 42285 (July 21, 2008).

³ 73 FR 42285.

⁴ <https://www.ftc.gov/policy/public-comments/initiative-259>; <https://www.ftc.gov/policy/public-comments/initiative-294>.

⁵ <https://www.ftc.gov/policy/public-comments/initiative-259>; <https://www.ftc.gov/policy/public-comments/initiative-294>.

⁶ 77 FR 74746 (Dec. 17, 2012).

¹ 49 FR 45692 (Nov. 19, 1984).

the availability of VHRs and directing consumers to an FTC website for more information about those reports; changing the statement on the Buyers Guide that describes the meaning of “As Is” when a dealer offers to sell a used vehicle without a warranty; and adding a statement, in Spanish, to the English Buyers Guide advising Spanish-speaking consumers to ask for a Spanish Buyers Guide if they could not read the English version. The NPRM also requested comments on revising the Buyers Guide to include non-dealer warranty boxes and a revised List of Systems that contained airbags and catalytic converters. In response to the NPRM, the Commission received nearly 150 comments from members of the public, including automobile dealers, consumer attorneys, consumer advocacy organizations, automobile dealer associations, providers of VHRs, legal aid agencies, consumer protection agencies, and state attorneys general.⁷

After reviewing the comments, the Commission published a supplemental notice of proposed rulemaking (“SNPRM”).⁸ In the SNPRM, the Commission proposed additional modifications to address concerns raised by commenters and sought comments on alternative proposals and issues that commenters identified in response to the NPRM. The Commission proposed amending the Rule to require that dealers who had obtained a VHR on an individual vehicle indicate on the Buyers Guide that they had obtained such a report and would provide a copy to consumers who requested one. The proposal retained, with modifications, the statement proposed in the NPRM to encourage consumers to obtain VHRs, to search for safety recalls, and to visit a proposed FTC website for more information. The proposed amended Rule would not have required dealers to obtain VHRs and would not have mandated a specific type of VHR or designated a specific provider of the reports.

The Commission also proposed modifying the Buyers Guide statement that describes the meaning of an “As Is” sale in light of comments concerning a

revision of the statement proposed in the NPRM. The “As Is” statement is meant to clarify that a dealer is offering the vehicle for sale without a warranty, *i.e.*, without any undertaking or promise by the dealer to be responsible for post-sale repairs to the vehicle. The Commission also sought comments on providing boxes on the front of the Buyers Guide where dealers could disclose manufacturer and other non-dealer warranties, a Spanish statement on the English Buyers Guide advising Spanish-speaking consumers to ask for a Spanish Buyers Guide, and a revision to the descriptive language on the “Implied Warranties Only” Buyers Guide.

After reviewing the entire record, the Commission declines to adopt the approach proposed in the SNPRM, which would have required dealers that had obtained a VHR to check a new Buyers Guide box indicating that they had obtained a VHR and would provide a copy upon request. Instead, similar to what was proposed in the NPRM, the Commission has decided to add a statement to the Buyers Guide encouraging consumers to seek vehicle history information and directing consumers to an FTC website for more information. The Commission is aware that the marketplace for vehicle history information is changing rapidly and will continue to monitor developments in this area.

The Commission also has decided to revise the “As Is” statement proposed in the SNPRM. The revised statement in the Final Rule is:

AS IS—NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE ANY WARRANTY FOR ANY REPAIRS AFTER SALE.

(See Figure 1). The Commission is also adopting the revised “Implied Warranties Only” disclosure proposed in the NPRM for use in jurisdictions that prohibit “As Is” used vehicle sales.⁹ (Figure 2).

The Commission has decided to modify the Buyers Guide in other ways proposed in the NPRM and SNPRM. The modified Buyers Guide in the Final Rule includes boxes on the front of the Buyers Guide where dealers can disclose manufacturer and other non-dealer warranties. The Commission is also reformatting the Service Contract box on the front of the Buyers Guide to make it flush with the non-dealer warranty boxes.

⁹ See 16 CFR 455.2(b)(ii), 77 FR at 74768, 74770 (Figure 2). The Commission did not receive comments on the proposed revision to the “Implied Warranties Only” disclosure.

The Commission is adding a statement in Spanish to the front of the English Buyers Guide. The statement alerts Spanish-speaking consumers who cannot read the English Buyers Guide to ask for a Spanish Buyers Guide, if the dealer conducts the sale in Spanish. The additional Spanish statement is not intended to change the Rule’s existing requirement that dealers provide a Spanish Buyers Guide if the dealer conducts a sale in Spanish.

II. Basis for Final Rule and Analysis of Public Comments

The Commission received forty-one comments during the SNPRM comment period from groups and individuals. The Commission has considered those comments as well as the comments submitted in response to the NPRM and the 2008 Regulatory Review in promulgating the Final Rule. Commenters on the three notices include consumer advocacy groups, industry trade associations, state attorneys general (“State AGs”),¹⁰ state regulatory agencies, attorneys who practice consumer law, and individual consumers.

A. Vehicle History Information

i. Commission Decision and Summary

The Commission has decided to modify the Buyers Guide by adding a statement that advises consumers to obtain VHRs and to visit an FTC website for more information. The Final Rule is similar to the approach proposed in the NPRM, in which the Commission proposed a Buyers Guide containing a statement that advised consumers to obtain VHRs and directed consumers to an FTC website for more information.¹¹ In the SNPRM, the Commission proposed an alternative approach that would have required dealers who had obtained VHRs to check a box so indicating and to provide a copy of the report to consumers upon request. As described in greater detail below, commenters provided a range of views about both proposals and discussed various other approaches to disclosing vehicle history information.

The informational approach to VHRs adopted here should help reduce deception and consumer injury that could result from undisclosed or deceptive disclosure of title brands or other pieces of problematic history. It

¹⁰ Although the state attorneys general commented collectively, the group of state attorneys general who joined the comment on the NPRM differs from the group who commented on the SNPRM. State AG Group (2015) refers to the Mar. 17, 2015, SNPRM comment, and State AG Group (2013) refers to the Mar. 13, 2013, NPRM comment.

¹¹ 77 FR at 74754–74756.

⁷ Public comments on the NPRM are available at: <https://www.ftc.gov/policy/public-comments/initiative-460>.

⁸ 79 FR 70804 (Nov. 28, 2014). Public comments on the SNPRM are available at: <https://www.ftc.gov/policy/public-comments/initiative-583>. Comments cited in this notice are identified by the name of the commenter (organization or individual) followed by the year of the comment. The designation (2015) identifies comments made in reference to the SNPRM and (2013) identifies comments made in reference to the NPRM (*e.g.*, Center for Auto Safety (“CAS”)) (2015) is the CAS comment on the SNPRM).

reduces the potential that, under the SNPRM approach, consumers will rely too much on particular VHRs and dealers as a source of mechanical condition information, and instead directs consumers to a source of information on the FTC's website which is independent of the dealer. Moreover, the informational approach does not appreciably increase the burden on dealers beyond that already imposed by the Rule. By recommending that consumers obtain their own VHRs from whatever source best suits their needs, the Buyers Guide may make consumers more educated about VHRs and prompt more consumers to make appropriate use of them.

In reaching this decision, the Commission has considered the differences in VHRs and providers, the strengths and limitations of VHRs, and the evolving development of the collection and distribution of vehicle history information. The Commission notes that consumers currently can gain access to VHRs at no cost from many dealers, automobile market websites, buying services, and other sources and can purchase VHRs at a nominal cost from commercial vendors. This approach balances the benefits to consumers of vehicle history information and the burden of requiring dealers to procure and disclose vehicle history information.

ii. Sources of Vehicle History Information

Vehicle history information is available from a variety of public and private sources. These sources include state titling agencies (e.g., departments of motor vehicles ("DMVs")), the National Motor Vehicle Title Identification System ("NMVTIS"), and commercial vehicle history providers, such as CARFAX and Experian's AutoCheck.

NMVTIS is a nationwide electronic database of vehicle history information created pursuant to the Anti-Car Theft Act of 1992.¹² NMVTIS was created to prevent the introduction or reintroduction of stolen motor vehicles into interstate commerce, to protect states and individual and commercial consumers from fraud, to reduce the use of stolen vehicles for illicit purposes including funding of criminal enterprises, and to provide consumers

protection from unsafe vehicles.¹³ It is designed to enable nationwide access to title information submitted by state titling agencies, and information concerning junk or salvage vehicles that insurers, recyclers, and salvage yards are required by law to submit.¹⁴ It is intended to serve as a reliable source of title and brand history.¹⁵ NMVTIS is limited to providing data on five key indicators associated with preventing auto fraud and theft: Current title information, brand history, odometer reading, total loss history, and salvage history.¹⁶

Although NMVTIS is intended to be a reliable source of vehicle brand and title history, it does not contain detailed repair history and may not include significant damage history.¹⁷ For example, information on previous significant damage may not be included in NMVTIS if a vehicle was never determined to be a "total loss" by an insurer (or other appropriate entity) or branded by a DMV.¹⁸ On the other hand, an insurer may be required to report a vehicle as a "total loss" even if the state's titling agency does not brand it as "junk" or "salvage."¹⁹

The NMVTIS Web site, www.vehiclehistory.gov, contains live links to the Web sites of approved commercial vendors that sell NMVTIS reports to the public.²⁰ Consumers can purchase NMVTIS reports from these vendors for a few dollars. Approved vendors to both consumers and dealers are subject to quality control standards designed to ensure consistency with the intent and purpose of the Anti-Car Theft Act and its implementing regulations.

Title and other vehicle history information are also available in commercial reports from vendors such as CARFAX and Experian's AutoCheck.

¹³ See Understanding an NMVTIS Vehicle History Report, available at: http://www.vehiclehistory.gov/nmvtis_understandingvhr.html.

¹⁴ *Id.*

¹⁵ Brands are descriptive labels (applied by state motor vehicle titling agencies) regarding the status of a motor vehicle, such as "junk," "salvage," and "flood." NMVTIS keeps a history of all brands that have been assigned to the vehicle by any state. See *id.* Individual state laws determine the application of title brands. The meaning of a brand and the brands that states assign differ by state.

¹⁶ http://www.vehiclehistory.gov/nmvtis_understandingvhr.html.

¹⁷ See Consumer Access Product Disclaimer available through: <http://www.vehiclehistory.gov/index.html>.

¹⁸ See *Id.*

¹⁹ *Id.*

²⁰ The American Association of Motor Vehicle Administrators ("AAMVA") operates NMVTIS under the oversight of the Department of Justice. AAMVA is responsible for approving vendors. Approved NMVTIS vendors must comply with quality control standards and are monitored by AAMVA.

CARFAX and AutoCheck enable consumers to purchase VHRs, and some dealers distribute them to consumers free of charge. CARFAX and AutoCheck obtain data from state titling agencies, insurers, repair facilities, automobile auctions, salvage facilities, and fleet rental firms. These reports can include information on prior ownership, usage, damage, repair history, etc. They may even disclose whether a vehicle has had regular oil changes. Both CARFAX and AutoCheck offer mobile apps that allow real-time access to their reports. In addition, both CARFAX and AutoCheck offer consumers an option to pay a flat fee to receive multiple reports.

Commercial VHRs may include vehicle condition data from sources other than NMVTIS.²¹ According to CARFAX, NMVTIS reports carry limited title, odometer, brand, and salvage/total loss information, whereas commercial reports may contain "a wealth of information about brands, total losses, prior wrecks, airbag deployments, open recalls, odometer readings, and even maintenance history."²² Experian noted that its AutoCheck VHRs can include information about fire and flood damage; accident damage, including the number and severity of any accidents; number of prior owners; auction inspection announcements; salvage, theft, or lemon;²³ fleet or rental use; frame damage; service and maintenance records; and manufacturer recalls.²⁴

iii. Summary of Procedural History and Vehicle History Proposals

In the NPRM, the Commission proposed a statement on the Buyers Guide informing consumers about the availability of VHRs and advising consumers to obtain the reports. In response, many consumer advocacy groups, the State AG Group, and some NMVTIS vendors recommended that the Commission require dealers to obtain NMVTIS reports and/or adopt California Assembly Bill 1215 ("AB 1215") (codified as Cal. Vehicle Code 11713.26), or some variation of it.²⁵ AB

²¹ Consumer Access Product Disclaimer available through: <http://www.vehiclehistory.gov/index.html>.

²² CARFAX (2013) at 1.

²³ State "lemon" laws typically require a manufacturer to buy back a new vehicle if defects in the vehicle cannot be repaired after a reasonable number of attempts. See *Lemon Law Basics* available from the Int'l Ass'n of Lemon Law Administrators ("IALLA") at http://ialla.net/pub_1.htm. Some states use the title brands lemon, lemon law buyback, or manufacturer buyback, or similar terms, to designate vehicles that have been reacquired by a manufacturer under a state lemon law.

²⁴ Experian (2013) at 3.

²⁵ E.g., Consumers for Auto Reliability and Safety ("CARS"), *et al.* (2013) (fourteen consumer advocacy groups joined the comment); Legal Aid

¹² 49 U.S.C. 30501–30505. The United States Department of Justice published the final rule implementing NMVTIS in 2009. 28 CFR part 25, subpart B, 74 FR 5740 (Jan. 30, 2009). For a detailed discussion of NMVTIS information, and limitations of that information, see http://www.vehiclehistory.gov/nmvtis_consumers.html.

1215 requires dealers to obtain NMVTIS reports and to affix a warning label to a vehicle if the NMVTIS report shows a previous salvage or other state title brand or contains some other reported event, such as a total loss report from an insurance company. Broadly speaking, dealers' groups and the leading vendors of commercial VHRs opposed requiring dealers to obtain NMVTIS or commercial reports, or a regulation that would effectively choose one type of provider of VHRs over others.²⁶

Rather than issuing a final rule based on the NPRM or AB 1215, the Commission published the SNPRM to seek comments on requiring dealers to disclose on the Buyers Guide if they had a VHR and to provide a copy of whatever report they had to requesting consumers. The SNPRM also invited public comments on several other approaches to vehicle history information proposed in the comments on the NPRM. The various approaches ranged from recommending that the Rule not address vehicle history information at all to approaches that generally fell somewhere between the NPRM's informational approach and the required disclosures of AB 1215.

iv. Analysis of Comments

a. The Commission's Authority To Promulgate a Rule Addressing Vehicle History Information

The National Automobile Dealers Association ("NADA") and the National Independent Automobile Dealers Association ("NIADA") argue that a rule provision dealing with VHRs would exceed the Commission's authority.²⁷ Specifically, they contend that the Used

Car Rule was promulgated under Title I of the Magnuson-Moss Warranty Act, 15 U.S.C. 2309(b), which directs the Commission to initiate "a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles," and that vehicle history information is unrelated to warranty and warranty practices.²⁸

NADA, but not NIADA, further argues that the Commission must use more elaborate rulemaking procedures than those specified by the Administrative Procedure Act ("APA")²⁹ in order to reach certain independent dealers that sell used cars but (under NADA's interpretation) do not "service" them.³⁰ Section 1029 of the Dodd-Frank Act ("DFA")³¹ authorizes the FTC to use the more informal APA rulemaking procedures to prescribe rules with respect to motor vehicle dealers that are "predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both." 12 U.S.C. 5519(a), (d). According to NADA, certain entities that are subject to the Used Car Rule (although apparently none of NADA's members themselves) are not "predominantly engaged in the sale and servicing" of motor vehicles because they only sell and do not service vehicles.³² NADA thus argues that, to reach these entities, any amendments affecting all dealers subject to the Used Car Rule must be promulgated using the heightened

procedures required by section 18 of the FTC Act.³³

(1) The Commission Has Statutory Authority To Issue These Rule Amendments

NADA and NIADA argue that the Commission lacks statutory authority to issue these Rule amendments. That argument, however, founders on the mistaken premise that the Rule rests solely on the Magnuson-Moss Warranty Act and not also on the FTC Act. As discussed in more detail below, the Rule has historically rested on *both* Title I of the Magnuson-Moss Warranty Act and the Commission's authority under the FTC Act to issue rules addressing deceptive acts or practices. In the current proceeding, the Commission is issuing the rule amendments solely under the latter authority.

Ever since the Used Car Rule was promulgated, the Commission has made clear that the authority for the Rule "is derived from two sources": Title I of the Magnuson-Moss Warranty Act and the FTC Act.³⁴ The specific authority under the FTC Act is section 18, which authorizes the FTC to issue trade regulation rules that "define with specificity acts or practices which are unfair or deceptive" within the meaning of section 5 of the FTC Act.

The dual bases of statutory authority are also reflected in the Rule's existing provisions and the procedures that the Commission used to promulgate the Rule. Some of the current provisions in the Used Car Rule deal with unfair or deceptive acts or practices that are not directly related to warranties or warranty practices.³⁵ Moreover, given that the Rule is in part a trade regulation rule, the Commission followed the more elaborate procedures in section 18 of the FTC Act when promulgating the Used Car Rule, not the simpler procedures that would have been available if the Rule had been issued solely under the Magnuson-Moss Warranty Act.

NADA and NIADA are thus incorrect in arguing that the VHR amendments exceed the FTC's rulemaking authority.

Justice Center ("LAJC") (2013) (CARS joined the comment); Nat'l Salvage Vehicle Reporting Program ("NSVRP") (2013); Nat'l Vehicle Service ("NVS") (2013); CARCO (2013); ADD (2013) at 3-4; State AG Group (2015) ("we encourage the FTC to require dealers to obtain a NMVTIS report").

²⁶ CARFAX (2013) at 3 (FTC should not choose "exclusive technology and system by only providing information about a single public or private source of vehicle history"); Experian (2013) at 5-6 (NPRM "strikes a good balance in protecting used car consumers without being overly burdensome;" FTC should not promote one provider or source of vehicle history information over another; NMVTIS statute defines what information is included in a NMVTIS report and therefore NMVTIS reports are not likely to be as "robust" as commercial reports); NADA (2013) at 3 (questioning whether Rule permits NPRM proposed VHR statement and commenting that proposed Web site should not endorse, link to, or otherwise imply legitimacy of any particular vehicle history company, report, or service); NIADA (2013) at 3 (commending Commission for not requiring dealers to provide vehicle history reports/damage history).

²⁷ See NADA (2015) at 3-4; NIADA (2015) at 3. NADA is the national trade association of manufacturer-franchised new vehicle dealers. NIADA is the national trade association of independent non-franchised used vehicle dealers.

²⁸ Public Law No. 93-637, formally known as the Magnuson-Moss Warranty—Federal Trade Commission Improvements Act, has two titles. Title I concerns consumer product warranties and includes a provision directing the FTC to "initiate within one year after the date of enactment of this Act a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles." 15 U.S.C. 2309(b). Title II amended various parts of the FTC Act and added what is currently section 18 of the FTC Act, which specifies the applicable procedures when the Commission issues a trade regulation rule.

Section 18 rulemakings are sometimes called Magnuson-Moss rulemakings, after the name of the bill that created section 18 of the FTC Act. But rulemakings under *Title I* of the Magnuson-Moss Warranty Act—that is, rulemakings related to warranties—are governed by the procedural requirements described in 15 U.S.C. 2309(a), not by the procedural requirements described in section 18 of the FTC Act. For warranty rulemakings under 15 U.S.C. 2309(a), the Commission is required to follow the notice-and-comment procedures in 5 U.S.C. 553 and additionally to provide "interested persons an opportunity for oral presentations of data, views, and arguments." 15 U.S.C. 2309(a).

²⁹ 5 U.S.C. 500-596.

³⁰ See NADA (2015) at 4.

³¹ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, sec. 1029 (codified at 12 U.S.C. 5519).

³² See NADA (2015) Exh. A at 6 & n.6.

³³ NADA (2015) Exh. A at 1, 8. NADA also argues that, "[a]t the very least, the FTC cannot go below" the hybrid rulemaking procedures found in 15 U.S.C. 2309(a)—*i.e.*, the notice-and-comment procedures of 5 U.S.C. 553 plus an opportunity for oral presentations. NADA (2015) Exh. A at 6 n.7.

³⁴ See Trade Regulation Rule; Sale of Used Motor Vehicles, 49 FR 45692, 45703 (Nov. 19, 1984). For this same reason, the authority citation for part 455 has always cited both statutes. See *id.* at 45725; Regulatory Flexibility Act and Periodic Review of Used Motor Vehicle Trade Regulation Rule, 60 FR 62195, 62205 (Dec. 5, 1995).

³⁵ See, e.g., 16 CFR 455.1(a)(1) (making it a deceptive act or practice for any used vehicle dealer to misrepresent the mechanical condition of a used vehicle).

The rule amendments are based solely on the Commission's authority under the FTC Act to issue rules addressing deceptive acts or practices. In particular, the VHR amendments will help prevent deception in the market for used vehicles, as previously discussed in the NPRM and as further explained herein.³⁶ The Commission has properly acted under sections 5 and 18 of the FTC Act in promulgating the VHR amendments.

(2) The DFA Authorizes the Commission To Issue These Rule Amendments Pursuant to APA Procedures

Section 1029 of the DFA authorizes standard APA rulemaking procedures when the Commission uses its section 5 and section 18 rulemaking authority to address unfair or deceptive acts or practices by motor vehicle dealers. The DFA defines a "motor vehicle dealer" to mean someone who is (1) licensed by a State or territory to sell motor vehicles, and (2) takes title, owns, or has physical custody of them.³⁷

Section 1029(d) authorizes the FTC "to prescribe rules under sections 5 and 18(a)(1)(B) of the Federal Trade Commission Act" with respect to motor vehicle dealers that are "predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both."³⁸ The DFA authorizes the Commission to promulgate such rules "in accordance with" the APA procedures in 5 U.S.C. 553, "[n]otwithstanding section 18 of the Federal Trade Commission Act." DFA 1029(d).

NADA argues that some non-franchised used car dealers are outside the scope of DFA 1029(a) because they sell but do not "service" vehicles.³⁹ This argument, however, relies on an unduly narrow interpretation of "servicing." Although the DFA does not define "servicing," the plain meaning of that term, along with the statutory language in DFA 1029(b)(3), suggests that the term should be read broadly to encompass activities such as "repair,

refurbishment, [or] maintenance," as well as other services.⁴⁰

That definition captures activities undertaken by essentially all used car dealers. For example, whether or not they offer *post-sale* repair or maintenance services, used car dealers routinely prepare vehicles for sale by addressing any obvious mechanical problems and, as the Commission has previously noted, by undertaking the "general industry practice of appearance reconditioning."⁴¹ Such activities are a type of "servicing" within the plain meaning of that term and fall easily within the category of "refurbishment" activities mentioned in DFA 1029(b)(3). Because the Commission previously determined that used car dealers "routinely" recondition vehicles, *id.*, and NADA has not offered any evidence that used car dealers have stopped engaging in this "general industry practice," the Commission finds that dealers' practice of reconditioning vehicles is sufficient to satisfy DFA 1029(a)'s "and servicing" language.

The legislative history of DFA 1029 likewise confirms that Congress intended to preserve the FTC's existing rulemaking authority over auto dealers but streamline the procedures applicable to all such dealers, not only to an arbitrarily defined subset of them. When Congress enacted section 1029 of DFA, Congress sought to achieve two ends. First, Congress was aware of and intended to preserve the FTC's existing authority over auto dealers. For example, Representative Frank said, "We are not increasing the authority that the FTC has. There is no further grant of powers other than what the FTC already has."⁴² Senator Dodd similarly stated, "The Federal Trade Commission has jurisdiction on—on automobile dealerships so we're not breaking new ground. We're just, in fact, providing some tools for them to do this job."⁴³

⁴⁰ See DFA 1029(b)(3) (creating a category of persons who offer or provide "a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service" (emphasis added)).

⁴¹ 49 FR at 45701. The record contains no evidence that the industry practice of reconditioning used vehicles is less widespread today than it was in 1984 when the Commission adopted the Rule.

⁴² Transcript of House-Senate Conference Committee Markup of H.R. 4173, Financial Regulatory Overhaul Bill (June 24, 2010), <http://www.cq.com/doc/congressionaltranscripts-3690270> (last visited Dec. 4, 2015).

⁴³ Transcript of House-Senate Conference Committee Markup of H.R. 4173, Financial Regulatory Overhaul Bill (June 22, 2010), <http://www.cq.com/doc/congressionaltranscripts-3693204> (last visited Dec. 4, 2015).

Second, Congress was aware that the FTC's existing section 18 rulemaking process is time consuming and wanted to speed up the FTC's rulemaking process with respect to auto dealers. As Representative Frank explained, the reason for section 1029 was to "expedite the ability of the FTC to act responding to" concerns about dealers' unfair or deceptive acts or practices.⁴⁴ Representative Watt noted that requiring the FTC to use its existing section 18 procedures "that could take up to eight years before you can do something to respond to some predatory practice" might create "very bad consequences."⁴⁵

Congress never suggested that it intended to apply the expedited rulemaking procedures to only a subset of the car dealers who are subject to the FTC's jurisdiction. Moreover, Congress had no clear basis for requiring different rulemaking procedures for different used-car dealers depending on what types of post-sale services those dealers happened to offer. In short, NADA's argument not only conflicts with the statutory text and legislative history, but would serve no rational policy objective.

Finally, as discussed, NADA's argument about the scope of the FTC's APA rule-making authority rests on an unduly narrow interpretation of "servicing" that includes only post-sale activities and excludes pre-sale activities such as refurbishing. But NADA's members are franchised dealers who are required to offer *post-sale* or *post-lease* servicing and warranty work as part of their franchise agreements. NADA's procedural argument could thus apply only to a subset of the non-franchised dealers separately represented in part by NIADA, which, notably, does *not* make the argument. The record contains no data to support NADA's assumption that many non-franchised dealers provide no post-sale "servicing," which suggests that NADA's argument on this point may have limited applicability even if the term "servicing" were construed narrowly to include only post-sale activities.

b. Incorporating the Disclosure of Vehicle History Information Into the Rule

Some commenters raised arguments against including vehicle history information in the Buyers Guide. First,

⁴⁴ Transcript of House-Senate Conference Committee Markup of H.R. 4173, Financial Regulatory Overhaul Bill (June 24, 2010), <http://www.cq.com/doc/congressionaltranscripts-3690270> (last visited Dec. 4, 2015).

⁴⁵ *Id.*

³⁶ 77 FR at 74755–56; section II.A.iv.f., *supra*.

³⁷ DFA 1029(f)(2).

³⁸ DFA 1029(a), (d).

³⁹ See NADA (2015) Exh. A at 6 & n.6. It is unclear from NADA's comment whether NADA is separately arguing that certain entities subject to the Used Car Rule fall outside the DFA's definition of "motor vehicle dealer" which is limited to entities licensed by a State or territory to sell motor vehicles. 12 U.S.C. 5519(f)(2)(A). To the extent that NADA is making this assertion, NADA does not develop it and the Commission therefore declines to address it. In any event, many, if not all, used vehicle sellers subject to the Rule are also required to be licensed by the state or territory in which they do business.

NADA and NIADA commented that the Rule and the Buyers Guide are limited to warranty disclosures and that the disclosure of vehicle history information is outside the scope of the Rule.⁴⁶ As explained above in subsection (a), this argument is based on a misunderstanding of the Rule's purpose. From its inception, the Rule has addressed unfair or deceptive acts or practices as well as warranty practices.⁴⁷ For this reason, the Buyers Guide already contains information that is primarily intended to help prevent consumer deception and that is not directly related to warranty disclosures, such as the spoken promises warning, the list of major defects and systems, and the advice to ask about a pre-purchase inspection.

The Commission concludes that incorporating vehicle history information into the Rule fits within the general framework of the existing Rule and would benefit consumers by reducing deception in the used car market. Encouraging consumers to obtain VHRs independently will serve to direct consumers to an additional source of pre-sale information that is not controlled by the dealer and thereby lessen the consumer's reliance on dealers for information. The incorporation of vehicle history information should help reduce deception by unscrupulous dealers, because any misrepresentations will be contradicted by information that consumers have obtained independently.

Second, NADA and CARFAX commented that including vehicle history information on the Buyers Guide is not necessary because dealers already obtain and share commercial VHRs with consumers.⁴⁸ Of course, not all dealers obtain and share VHR information, and the prevalence of the practice among non-franchised independent dealers is unclear.⁴⁹ In addition, unscrupulous dealers might provide out-of-date reports or pick reports that contain the least amount of negative data. A statement on the Buyers Guide about the

availability of VHRs will help ensure that consumers are not deceived by such practices.

Finally, some commenters expressed doubt about the reliability of vehicle history information.⁵⁰ NADA commented that, although general information related to vehicle history might be appropriate on a Commission website, a reference to specific commercial providers would not.⁵¹ NADA argued that consumers could gain a false sense of security from the reports, especially if they are required by the government and impliedly have the Commission's imprimatur on them.⁵² For those reasons, NADA commented that the FTC should include a disclaimer about the limitations of VHRs, if the reports are mentioned at all.⁵³

A disclaimer, however, is unnecessary because the reports are typically dated and contain disclaimers about the limits of the data in them.⁵⁴ In addition, the website listed on the Buyers Guide includes information about the limits of data in VHRs.

Some commenters approved of the informational approach proposed by the NPRM, *i.e.*, adding a statement to the Buyers Guide advising consumers to obtain a VHR and directing consumers to an FTC website.⁵⁵ Two vehicle history vendors commented that the FTC should avoid promoting a particular vendor or type of technology to deliver VHRs.⁵⁶ In addition, the auto dealer associations recommended that the Rule not favor a particular source of vehicle history information.⁵⁷ NIADA commented that the NPRM's proposed approach of directing consumers to a website and advising an independent inspection is "an acceptable compromise."⁵⁸ Experian commented that the NPRM proposal "strikes a good balance in protecting used car consumers without being overly burdensome."⁵⁹

The Commission has decided to use an informational approach to vehicle

history that reduces consumer reliance on dealers for information. The chosen approach does not endorse any type of or vendor of vehicle history information. Encouraging consumers to obtain VHRs independently will reduce deception in the marketplace by directing consumers to sources of information about the vehicles that they are considering buying that are not controlled by the selling dealer and thereby reduce the potential for consumers to rely upon misrepresentations from unscrupulous dealers.

c. Alternative Approaches to Incorporating Vehicle History Information Into the Rule

The commenters who recommended incorporating vehicle history information into the Rule proposed several different approaches. Some favored an informational approach; some recommended a Rule that, like AB 1215, would require dealers to obtain VHRs and to disclose information about them to consumers; some suggested various approaches in between. Below, the Commission discusses why it has declined to adopt three of the alternative approaches recommended by commenters.

First, in response to the NPRM and the SNPRM, the State AG Group, other regulators, and consumer advocacy groups stated that they prefer an approach like AB 1215 along with a requirement that dealers obtain and provide consumers with NMVTIS reports.⁶⁰ For example, the National Consumer Law Center commented that dealers should be required to obtain a report that includes up-to-date vehicle history information from NMVTIS.⁶¹ Otherwise dealers might pick reports that contain the least amount of negative data, and VHR vendors might produce

⁶⁰ State AG Group (2015) at 7; CAS (2015) at 1 (required disclosure of NMVTIS information); Nat'l Consumer Law Center ("NCLC"), *et al.* (comment joined by five consumer advocacy group including CARS) (2015) at 1-4 (FTC should require dealers to obtain VHRs that meet a minimum standard of containing NMVTIS information); CARS (2013) at 2 (FTC should require dealers to check NMVTIS and post AB 1215 warning label); Consumers Union (2015) at 1 (FTC should require dealers to check NMVTIS and other auto history databases as appropriate); Steinbach (consumer attorney) (2015) at 2 (FTC should incorporate NMVTIS data into Buyers Guide or require dealers to provide NMVTIS reports); Maier (consumer attorney) (2015) (FTC should require NMVTIS and safety recall information); Holcomb (VA DMV) (2015); NSVRP (2015) (FTC should adopt AB 1215); Stiger (Los Angeles County Department of Consumer Affairs) (2015) (noting that AB 1215 has been beneficial, office approves of SNPRM proposal to require dealers to indicate if they have a VHR and to provide a copy upon request).

⁶¹ NCLC (2015) at 4.

⁴⁶ NADA (2015) at 5; NIADA (2015) at 3; *see also* NADA (2015) Exhibit A, note 1 (questioning whether, in 1984, the Commission exceeded its Magnuson Moss authority by adopting the pre-purchase inspection notice).

⁴⁷ For example, the Rule provides that misrepresenting the mechanical condition of a vehicle is a deceptive act or practice when a used vehicle dealer sells or offers to sell a used vehicle. 16 CFR 455.1(a)(1). *See* note 35 *supra*.

⁴⁸ NADA (2015) at 6-7 (NADA's comment is limited to the practices of franchised new vehicle dealers); CARFAX (2015) at 12.

⁴⁹ *See* NIADA (2015) at 8 (NIADA does not know how frequently independent dealers who access commercial VHRs provide them to consumers).

⁵⁰ *See, e.g.*, NADA (2015) at 5 ("it is important to understand that VHRs are unreliable and limited . . . only as good as the information available to the VHR providers.").

⁵¹ NADA (2013) at 3 (FTC website, if created at all, "should be limited to educational materials and should not endorse, link to, or otherwise imply the legitimacy of any particular vehicle history company, report, or service.").

⁵² NADA (2013) at 4.

⁵³ NADA (2015) at 9; NADA (2013) at 4.

⁵⁴ *See, e.g.*, NMVTIS Consumer Access Product Disclaimer available at www.vehiclehistory.gov.

⁵⁵ *E.g.*, CARFAX (2013) at 1.

⁵⁶ CARFAX (2013) at 2-3; Experian (2013) at 1.

⁵⁷ NADA (2013) at 4; NIADA (2013) at 3.

⁵⁸ NIADA (2013) at 3.

⁵⁹ Experian (2013) at 5.

reports to cater to dealer demand for more favorable reports.⁶²

The Commission, however, has decided that it will not adopt an amended Rule modeled on AB 1215 for the reasons already stated in the SNPRM.⁶³ In addition, the Commission cannot give dealers the protection from liability for inaccuracies in NMVTIS reports provided by AB 1215.⁶⁴ The Commission recognizes the limitations of VHR information as an indicator of a vehicle's current mechanical condition and does not wish to over-emphasize the value of VHR information over other potentially more probative sources of information, such as a pre-purchase mechanical inspection. In addition, requiring dealers to provide NMVTIS reports might discourage consumers from investigating other types of VHRs from other vendors.

Second, as an alternative to the AB 1215 approach, the State AG Group proposed a vehicle history disclosure model similar to the SNPRM with the addition of a "branded title checkbox" that the dealer would be required to check to indicate that the vehicle's title had a brand.⁶⁵ Like the SNPRM, the State AG Group's proposal would not require dealers to obtain VHRs or designate a type of or vendor of VHRs.⁶⁶

The "branded title check box" proposal from the State AG Group suffers from a number of practical problems if dealers are not also required to obtain either NMVTIS reports or other VHRs. Without a requirement that dealers obtain a VHR, the branded title check box could encourage dealers to forego VHRs entirely or to acquire only favorable ones. In addition, if an unchecked box, indicating that the dealer is unaware that the vehicle has a branded title, is incorporated into the contract as the dealer's affirmative representation that the vehicle in fact does not have a branded title, the dealer could face liability if a subsequent VHR shows a branded title. The lack of a checkmark could also suggest to consumers that the vehicle is in good

condition when the lack of a checkmark is actually the far more limited representation that the dealer does not know whether the vehicle has a branded title.

Third, CAS commented that its preferred approach is "something of a hybrid" between AB 1215 and the State AG Group's approach.⁶⁷ CAS would require dealers to obtain and to disclose NMVTIS reports, as required by AB 1215, and to check a box, similar to the branded title box suggested by the State AG Group, disclosing if the vehicle has a title brand.⁶⁸ CAS envisions an improved disclosure box along with information about vehicle histories on the Buyers Guide and the FTC websites.⁶⁹ Dealers who check the box would be required to provide a copy of any reports that they have obtained to requesting consumers.⁷⁰ CAS would require dealers to keep any report that they view for as long as the dealer possesses the vehicle to which the report applies.⁷¹

As noted, the Commission has decided against following AB 1215 and requiring dealers to obtain NMVTIS reports.⁷² The Commission is also not adopting the branded title check box proposed by the State AG Group, and favored by CAS, for the reasons previously discussed.

The Commission is also not adopting the CAS approach because of the recordkeeping that it seems to necessarily entail. The CAS approach would impose new recordkeeping obligations by requiring dealers to keep copies of any reports that they view. The purpose of the CAS recordkeeping requirement is to prevent dealers from selecting favorable reports or from, for example, viewing reports online, but not printing or storing them, or obtaining information orally without ever viewing, or possessing, an actual report. But it is not clear how the Commission could construct detailed rules about when a dealer will be deemed to have viewed a report that would encompass all situations or how the Commission

would enforce those rules if they could be devised.

d. Comments on the SNPRM Approach to Vehicle History Reports

As noted above, in the SNPRM, the Commission proposed requiring dealers who had obtained VHRs to check a box so indicating and to provide a copy of the report to consumers upon request. The SNPRM proposal also contained additional text recommending that consumers obtain a VHR, regardless of whether the box was checked, and advising that consumers visit an FTC website for information on how to obtain a VHR, how to search for safety recalls, and other topics. Many commenters criticized the SNPRM approach.

Consumer advocacy groups identified several problems with the SNPRM vehicle history approach. CAS, other consumer advocacy groups, and the State AG Group note that dealers could avoid revealing negative information in VHRs by, for example, picking and choosing among reports to select the most favorable report, discarding older (or newer) reports, selecting a report that showed the fewest problems, or selecting a vendor that generates reports showing minimal problems.⁷³ As noted, CAS commented that it prefers the State AG Group's approach (requiring a title brand disclosure on the Buyers Guide and providing a copy of the most recent report from each vendor) if the Commission does not require dealers to provide NMVTIS reports.⁷⁴ CAS notes that either approach could be supplemented with a requirement that dealers provide copies of the VHRs that the dealer possesses, but also tacitly acknowledges the difficulty in devising and implementing such a requirement.⁷⁵

NADA further questioned the value of VHRs to consumers. NADA reiterated its earlier comments that VHRs are unreliable and of limited utility, which NADA states VHR vendors acknowledge in their own disclaimers about the accuracy, reliability, or completeness of the data in the reports.⁷⁶ Given these

⁶² NCLC (2015) at 3. *See also* NIADA (2015) at 3 (unscrupulous dealers may engage in VHR shopping); NSVRP (2015) at 3 (allowing any commercial report, instead of NMVTIS, would enable VHR shopping); Boyer (Nov. 20, 2014) (will companies evolve "to provide less objective and more 'positively spun' reports for dealers?").

⁶³ 79 FR at 70808.

⁶⁴ AB 1215 grants dealers immunity from liability for inaccuracies, errors, and omissions in NMVTIS reports. Cal. Veh. Code 11713.26(f).

⁶⁵ State AG Group (2015) at 6; State AG Group (2013) at 5–6 (the "branded" title checkbox would indicate that the vehicle's title "will carry one or more of the following brands: Salvage, Prior Salvage, Rebuilt, Remanufactured, Flood, Lemon Law, or similar brand.").

⁶⁶ State AG Group (2015) at 6.

⁶⁷ CAS (2015) at 1.

⁶⁸ CAS (2015) at 1.

⁶⁹ CAS suggests an improved disclosure box. CAS (2015) at 1, note 2. Staff understands an improved disclosure box to mean one that provides more information on the Buyers Guide about what the NMVTIS report reveals, presumably similar to the AB 1215 warning label, rather than simply an indication that the NMVTIS report (or other VHR) indicates that the vehicle has a branded title.

⁷⁰ *Id.* at 2. CAS would consider permitting dealers to provide only the most recent report if the dealer has obtained multiple reports from the same provider.

⁷¹ *Id.* at 2.

⁷² *See* 79 FR at 70808.

⁷³ *Id.* at 2; State AG Group (2015) at 7 (dealers should not be able to skirt requirement by discarding an observed VHR prior to sale); NCLC (2015) at 2 (dealer could have third-party auctioneer or broker pull report so that dealer does not possess it).

⁷⁴ *Id.* at 2.

⁷⁵ *Id.* at 3 (Requiring dealers to provide VHRs upon request "will require very well-drafted controls on dealer practices regarding vehicle history reports.").

⁷⁶ NADA (2015) at 5–6, note 9. *See also, e.g.,* Kelly (NJ AG Div. Consumer Affairs) (2015) (unreliable information in CARFAX reports); Kramer (Oregon DMV) (2015) at 1 (NMVTIS is

limitations, NADA, and others, commented that the SNPRM's checkbox proposal could raise the prominence of VHR information in consumers' minds to an inappropriately high level.⁷⁷

Dealers' groups identified several additional problems with the vehicle history approach proposed in the SNPRM. NADA questioned the need for a rule about VHRs in the first instance because most franchised dealers, and potentially other dealers, already provide VHRs to consumers and because of a lack of evidence that dealers fail to disclose known title brands.⁷⁸ NADA commented that requiring dealers to indicate on the Buyers Guide whether they have a report and requiring dealers to provide it would make it less likely that dealers will continue to obtain and to distribute the reports because of the risk that the VHR information will be incorporated into the contract and that the dealer will be construed to have made a warranty about it.⁷⁹ NIADA also raised concerns about dealer exposure to liability for third-party VHR information that the dealer does not control,⁸⁰ which is potentially compounded by unreported repairs, poor reporting procedures, and different brands/classifications in each state.⁸¹

Both NADA and NIADA commented that the SNPRM does not define a VHR.⁸² NIADA stated that, without a definition, dealers would have to guess when to check a box indicating that they have a report.⁸³ NIADA also noted that, in addition to the well-known providers of VHRs such as NMVTIS and commercial vendors, other sources, such as banks, insurers, and service facilities potentially have information on used cars that could be construed to constitute VHRs.⁸⁴ NADA proposed defining VHRs as third-party reports from state titling agencies, NMVTIS, or commercial vendors.⁸⁵

limited because not all states participate and NMVTIS information is not independent information such as service records).

⁷⁷ NADA (2015) at 4; Carlson (2015) (adding VHR to Buyers Guide would give increased credibility to the reports); Copart (vehicle auctioneer) (2015) at 1 (FTC should not endorse VHRs but should continue to emphasize pre-purchase mechanical inspections, which will "provide more consumer protection than an often incomplete vehicle history report.").

⁷⁸ NADA (2015) at 6–7 and 12.

⁷⁹ NADA (2015) at 10. NADA estimated that 95% of franchised dealers are customers of one or both of the two major VHR retailers and "routinely" share the reports with their customers.

⁸⁰ NIADA (2015) at 4–6.

⁸¹ NIADA (2015) at 5.

⁸² NADA (2015) at 16; NIADA (2015) at 4.

⁸³ NIADA (2015) at 4.

⁸⁴ NIADA (2015) at 4.

⁸⁵ NADA (2015) at 16.

The commenters disagreed about whether dealers or consumers should be required to pay for copies of the VHRs contemplated by the SNPRM. Dealers' groups commented that dealers should be permitted to pass along their costs to consumers.⁸⁶ That cost could increase depending upon how often dealers must provide the reports because, dealers' groups and others commented, the SNPRM does not identify the point in a transaction when a dealer would become obligated to provide the reports.⁸⁷ Although NADA indicates that franchised dealers now routinely share VHR information with consumers,⁸⁸ NADA questioned whether licensing agreements would permit dealers to share those reports with all potential customers if doing so were to be required by the Rule.⁸⁹

Consumer advocacy groups, the State AG Group, and other commenters would place the costs of VHRs on dealers.⁹⁰ NCLC commented that the dealer would need to purchase only one report per vehicle, and provide the reports to successive consumers, whereas those same consumers would each need to purchase a separate report for the same vehicle.⁹¹ Moreover, consumers who looked at several vehicles when shopping would need to purchase multiple reports.⁹² NCLC commented that asking consumers to obtain reports on their own is impractical because of the cost of the reports, especially multiple reports.⁹³

⁸⁶ NADA (2015) at 13; NIADA (2015) at 7; Texas Automobile Dealers Ass'n (2015) ("TADA") at 2; Crowl, All Star Autos, Inc. (automobile dealer) (00021) (dealers should not be required to provide an expensive \$16.99 VHR to every customer).

⁸⁷ NIADA (2015) at 7; TADA (2015) at 2 (although unlikely, a consumer could request a VHR on every vehicle on a dealer's lot).

⁸⁸ NADA (2015) at 7.

⁸⁹ NADA (2015) at 14.

⁹⁰ State AG Group (2015) at 8; NCLC (2015) at 4–5.

⁹¹ NCLC (2015) at 3–4. NCLC notes that [at the time of its comment] CARFAX offered unlimited reports for a period of 60 days at a cost of \$54.99, and AutoCheck offered unlimited reports for 30 days for \$44.99, sums that NCLC notes are beyond the reach of many consumers.

⁹² NCLC (2015) at 3.

⁹³ NCLC (2015) at 4. However, consumers may be able to reduce their costs for multiple commercial reports in several ways. NADA notes that commercial VHR providers offer lower prices on a per report basis for multiple reports. NADA (2015) at 10, fn. 22. The AutoCheck and CARFAX websites corroborate NADA's statement, for example, consumers can purchase twenty-five AutoCheck reports for \$49.99, <http://www.autocheck.com/vehiclehistory/autocheck/en/AutoCheck-vehicle-history-reports/25-Reports-for-21-Days/p/10025>, or five CARFAX reports for \$49.99, ten dollars more than the price of a single report (\$39.99), <https://secure.carfax.com/creditCard.cfx?partner=CAR&partnerSiteLocation=4>. In addition, commercial VHRs such as those offered by CARFAX are in many cases available for free

NCLC and Consumers Union commented that some consumers might have Internet access only away from the dealership, at home or work, and would have to review the reports off-site and then return to the dealership to use the information.⁹⁴

The American Association of Motor Vehicle Administrators supported disclosure of vehicle history data at the point of sale. Both it and the Virginia DMV commented that the FTC should recommend or reference only VHRs that integrate NMVTIS data because NMVTIS is a congressionally mandated database.⁹⁵

e. Incorporating Safety Recall Information

A number of commenters urged the Commission to address safety recalls in an amended Rule. Several recommended that the Commission prohibit the sale of vehicles with open recalls.⁹⁶ Other commenters urged the Commission to require dealers to disclose if a vehicle is subject to an unrepaired (*i.e.*, "open") recall⁹⁷ or at least to check if a vehicle is subject to an open recall.⁹⁸ Consumers Union

through dealers' websites or websites listing used cars, such as AutoTrader.com and Cars.com. CARFAX (2015) at 2.

⁹⁴ NCLC (2015) at 4; Consumers Union (2015) at 2. However, the Commission notes that the increased use of smart phones may enable consumers to obtain mobile access to VHRs when consumers are on a dealer's lot shopping for a used vehicle.

⁹⁵ AAMVA (2015) at 1; Holcomb (VA DMV) (2015). AAMVA is the association of state DMV administrators. AAMVA operates NMVTIS under the oversight of the United States Department of Justice. http://www.vehiclehistory.gov/nmvtis_faq.html#operates.

⁹⁶ NCLC (2015) at 5–7; CAS (2015) at 4 (contending that "[i]t 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."); Steinbach (consumer attorney) (2015) at 7; NSVRP (2015) at 6–9 (recommending that the Commission require dealers to check for open recalls; would prefer that Commission require dealers to repair open recalls before offering vehicles for sale, but believes Commission lacks the authority to enact such a requirement); Karwoski, SEA, Inc. (2015) (Commission should require dealers to disclose open recalls and require franchised dealers to repair open recalls on franchise brand vehicles that they sell).

⁹⁷ State AG Group (2015) at 8 (proposing revised statement that places greater emphasis on recalls than the SNPRM statement); U.S. D.O.T. (2015) at 2–3 (recommending a Buyers Guide box for dealers to check if they have found safety recalls that have not been completed and directing consumers to check for open recalls at www.safercar.gov); Strassburger (Alliance of Automobile Manufacturers) (2015) (recommending that the Buyers Guide direct consumers to safercar.gov to check for open safety recalls).

⁹⁸ Spiller (NVS) (2015) at 2; Frias (North American Export Committee) (2015) at 2.

recommended two boxes where dealers would indicate whether they had (or had not) repaired a vehicle in compliance with any applicable recall notices.⁹⁹

Rather than adopt these proposals, the Commission has decided to address safety recalls by including a Buyers Guide statement directing consumers to check for open safety recalls by visiting *safercar.gov*. The Commission recognizes the significant public safety concerns associated with vehicle recalls, including in the used car marketplace, and is aware that potential legislation to address this public safety issue is under consideration and has NHTSA's support.¹⁰⁰ We believe that legislative bodies and NHTSA, as the federal agency primarily tasked with ensuring motor vehicle safety, are best situated to consider and resolve the many issues implicated by such proposals—including, for example, the competitive effects they would have on independent dealerships that are not authorized to make repairs, the effect they could have on used vehicle trade-ins, the fact that remedies for some recalls may remain unavailable for significant periods of time, and other factors affecting the costs and benefits to consumers.

The Commission does note, however, that under the FTC Act's existing prohibition on deceptive acts and practices, an advertiser's claims may trigger the need for the advertiser to disclose information about open safety recalls. For example, the Commission approved for public comment proposed consent orders concerning advertising that, according to the Commission's complaints, touted the benefits of rigorous inspections of used vehicles, but failed to disclose adequately that some of the vehicles were subject to open safety recalls.¹⁰¹ Those proposed settlements would curb deceptive conduct by requiring the respondents to qualify their inspection claims, wherever they make them, with clear and conspicuous disclosures informing consumers that their used vehicles may be subject to unrepaired recalls for safety issues and explaining how to determine whether an individual vehicle is subject to an open recall. Further, the proposed orders would

prohibit the respondents from making misrepresentations regarding recall status or safety, and require them to notify recent past consumers regarding recalls.

f. Final Rule on Vehicle History Reports and Safety Recall Information

The Commission has considered the comments and entire record and has decided to adopt a final rule similar to what it initially proposed in the NPRM. Accordingly, the Commission is revising the Buyers Guide to include a statement advising consumers to obtain a VHR and directing consumers to an FTC website for more information. The Buyers Guide VHR statement appears in Figures 1 and 2. The Spanish translation appears in Figures 4 and 5.

As described above, the views expressed by the commenters include those advocating that the Rule and the Buyers Guide should not address vehicle history information at all, those favoring an informational approach, and those favoring an approach that, like AB 1215, would require dealers to obtain VHRs (specifically a NMVTIS report in the case of AB1215) and to disclose information about them to consumers, and various approaches in between.

The Final Rule incorporates an informational approach to VHRs. Revising the Buyers Guide by directing consumers to obtain a vehicle history report should help reduce consumer injury and deception that could result from undisclosed or deceptive disclosure of title brands or other pieces of problematic history. The SNPRM approach could encourage consumers to rely too much on particular VHRs and dealers for mechanical condition information to the neglect of information available from sources independent of dealers. On the other hand, specifying the source or type of VHR that consumers consult, such as AB 1215 does, could discourage consumers from choosing VHRs that best suit their needs. Finally, an informational approach to VHR disclosures should not increase the burden on dealers much beyond what the Rule already imposes.

The Commission agrees that the SNPRM approach to VHR disclosures suffers from practical problems raised by the commenters. Among these is whether the Commission must define a VHR, or adopt a standard, such as NMVTIS, for the minimum amount of information that a VHR must contain to comply with a VHR disclosure requirement. Another question is whether the Commission would have to define what it means to obtain a report and whether the Commission can

prevent dealers from viewing a report online or discarding reports. Other problematic issues also would arise, such as whether consumers or dealers should bear the cost of the reports. If dealers bear the cost, should they be required to produce reports to all requesting consumers, or should they be required to provide reports only to *bona fide* potential customers rather than, for example, to all casual shoppers? The Commission notes that the SNPRM approach could create an incentive for dealers to shop for reports that minimize or do not include negative information and for vendors to produce such reports.

In addition, requiring dealers to produce any VHRs that the dealer possesses, as proposed by the SNPRM, could reduce the availability of VHRs that dealers currently provide because of dealer liability concerns. Such a requirement would likely necessitate an extensive, and potentially unwieldy, rule defining what constitutes a VHR and when a dealer will be deemed to have obtained a VHR that would likely be difficult to apply in all situations.

Moreover, the marketplace for VHRs is evolving rapidly. Consumers currently can purchase the reports from commercial vendors for between \$2 and \$40 per report and can also gain access to them at no cost from many dealers, automobile market websites, buying services, etc.¹⁰² The Commission is concerned that a mandatory approach to vehicle history information disclosure could have the unintended effect of impeding these developments and reducing consumer access to current and reliable vehicle history information.

The Commission is also adding language to the Buyers Guide statement directing consumers to check for open safety recalls by visiting *safercar.gov*. In its comment on the SNPRM, NHTSA recommended treating safety recalls in a manner similar to the SNPRM's treatment of VHRs. NHTSA proposed a box that dealers would check if they had searched for information about open recalls, which dealers would then be obligated to provide to consumers upon request.¹⁰³ Given that the Commission is adopting an informational approach to VHRs by directing consumers to obtain them independently, the Commission is also adopting a similar approach to safety recall information.¹⁰⁴

¹⁰² See note 93 *infra*. (consumers can purchase twenty-five AutoCheck reports for \$49.99).

¹⁰³ NHTSA (2015) at 2.

¹⁰⁴ As suggested by CAS, the Buyers Guide in the Final Rule uses the term "check for" safety recalls instead of "search" for recalls. CAS (2015), note 8.

⁹⁹ Consumers Union (2015) at 4–5.

¹⁰⁰ See, e.g., NHTSA (2015) at 3 (describing the Department of Transportation's proposed reauthorization bill, the GROW AMERICA Act, which would give the Department the authority to require used car dealers to remedy safety recalls before resale.).

¹⁰¹ The Commission's press release announcing the proposed settlements is available at <https://www.ftc.gov/news-events/press-releases/2016/01/gm-jim-koons-management-lithia-motors-inc-settle-ftc-actions>.

B. “As Is” Statement

i. Summary

The existing Buyers Guide contains a box that dealers who offer to sell a used car without a warranty are required to mark to indicate that the vehicle is offered “As Is,” *i.e.*, without a warranty from the dealer. Adjacent to that box is a statement describing the meaning of the term “As Is.” In the NPRM, the Commission proposed modifying that statement to make it easier to read and to understand, but not to change the statement’s meaning. In the SNPRM, the Commission proposed a revised formulation of the “As Is” statement and sought comments on other “As Is” statements.

After reviewing the comments that addressed the “As Is” statement, the Commission has decided to adopt the following “As Is” statement on the Buyers Guide which will appear next to a box that dealers would check in appropriate circumstances:

AS IS—NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.

The statement is intended to convey nothing more than that the dealer does not intend to provide post-sale repairs under a warranty. Dealer groups strenuously objected to the Commission’s SNPRM proposal to include the statement, “But you may have other legal rights and remedies for dealer misconduct.”¹⁰⁵ Consumer advocacy groups raised concerns that the SNPRM revision misstated dealers’ potential obligations in some circumstances. The Commission has attempted to balance these concerns with a simple statement that concerns the warranty responsibilities that the dealer intends to disclaim. The fact that the dealer does not provide a warranty does not foreclose the possibility that a dealer could have post-sale repair obligations in some circumstances.

ii. Existing “As Is” Statement

The existing “As Is” statement on the Buyers Guide has been part of the Buyers Guide since the Rule’s promulgation in 1984. The “As Is” statement was formulated to correct consumer misunderstanding of the term “As Is.”¹⁰⁶ The existing Buyers Guide states:

AS IS—NO WARRANTY

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no

responsibility for any repairs regardless of any oral statements about the vehicle. The Commission identified dealer oral misrepresentations regarding both mechanical condition and dealer after-sale repair responsibility in adopting the existing “As Is” disclosure.¹⁰⁷ The Commission concluded that a clear “As Is” disclosure would reduce consumer reliance on oral promises to repair problems that arise after sale, which may be difficult to enforce.¹⁰⁸

iii. NPRM “As Is” Statement

In the NPRM, the Commission proposed revising the Buyers Guide “As Is” statement to improve readability and to clarify the meaning of the term “As Is.” The Buyers Guide in the NPRM stated:

AS IS—NO DEALER WARRANTY

THE DEALER WON’T PAY FOR ANY REPAIRS. The dealer is not responsible for any repairs, regardless of what anybody tells you. (“NPRM ‘As Is’ Statement”).¹⁰⁹

iv. SNPRM “As Is” Statement

After reviewing the comments filed in response to the NPRM, the Commission, in the SNPRM, proposed retaining the “regardless of any oral statements about the vehicle” from the existing Rule and added “but you may have other legal rights and remedies for dealer misconduct.” Thus, the Buyers Guide in the SNPRM contains the following “As Is” statement:

AS IS—NO DEALER WARRANTY

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”).

v. Comments and Analysis

NCLC commented that the phrase “regardless of any oral statements” is “troubling” because “[i]t is likely to convey to consumers that the dealer has the right not to stand behind its oral statements.”¹¹⁰ According to NCLC, however, “under most states’ laws, when the dealer has made statements about a vehicle’s condition, it no longer has the ability to decline to accept

responsibility for repairs necessary to bring the vehicle up to that condition.”¹¹¹ Attorneys representing consumers agreed that the language could understate a dealer’s potential liability for oral misrepresentations.¹¹²

The State AG Group proposed eliminating the use of “As Is” entirely.¹¹³ The group observed that the focus of the statement should be on the “fact that the dealer is not providing a warranty, rather than the potentially confusing or misleading statements that the dealer is selling a vehicle ‘as is’ or that it ‘will not pay for any repairs.’”¹¹⁴ Dealers’ groups likewise emphasized that the disclosure should be about whether the dealer is providing a warranty.¹¹⁵

The Commission agrees that the description of an “As Is” sale should focus on whether the dealer is offering a warranty rather than on an affirmative statement that the dealer will not pay for repairs. Likewise, the disclosure should not focus on an affirmative statement about a consumer’s likely obligation in an “As Is” sale (“you will pay all costs for any repairs.”). Accordingly, the Commission has decided to delete the affirmative statements concerning the dealer’s and consumer’s respective obligations. Instead, the Commission has revised the Buyers Guide to add the explanatory statement, “the dealer does not provide a warranty for any repairs after sale.”

The Commission, however, has decided to retain the term “As Is.” As noted in the 1984 rulemaking, the Uniform Commercial Code specifically identifies using “As Is” as a method to disclaim implied warranties.¹¹⁶

To balance the potential of the “regardless of oral statements” language to insulate dealers from liability and to dissuade consumers from pursuing remedies for oral misrepresentations that may be available in some circumstances, the Commission, in the SNPRM, proposed adding “but you may

¹¹¹ *Id.*

¹¹² Flinn (2015) (Georgia attorney) (seller could be responsible for oral misrepresentations when vehicle is sold “As Is”; contracts induced by fraudulent misrepresentation are voidable); Gayle (2015) (Virginia consumer attorney). *Cf.* Moskos (2015) (South Carolina attorney) (suggests adding language to Buyers Guide that dealer is responsible for fraud regardless of what is on the Buyers Guide; judges sometimes accept dealer claim that it is not responsible for frame damage because possible frame damage is listed on back of Buyers Guide).

¹¹³ State AG Group (2015) at 4–5.

¹¹⁴ State AG Group (2015) at 5.

¹¹⁵ NADA (2015) at 18 (“should be one and only one goal in including this language [an explanatory phrase], and that is to explain that the dealer is not offering a warranty on the used vehicle.”).

¹¹⁶ 49 FR 45697 note 59; Uniform Commercial Code 2–316(3)(a).

¹⁰⁷ 49 FR at 45705–45706.

¹⁰⁸ 49 FR at 45722. *See also* 49 FR 45697 (discussing parol evidence rule exclusion of evidence of oral statements that contradict written contract terms).

¹⁰⁹ 77 FR at 74769 (Figure 1).

¹¹⁰ NCLC (2015) at 7.

¹⁰⁵ NADA (2015) at 18; NIADA (2015) at 7.

¹⁰⁶ 49 FR at 45722–45723.

have other legal rights and remedies for dealer misconduct.”¹¹⁷ The proposed language was a variation of language suggested by the State AG Group¹¹⁸ and, with several formulations, favored by various consumer advocacy organizations.¹¹⁹

Dealers’ organizations strongly objected to the proposed language. NIADA commented that “one is hard pressed not to read the third sentence as anything more than a provocation of consumers to search for dealer misconduct whether it exists or not.”¹²⁰ NADA commented that the proposed language is “gratuitous” and implies that dealers “are engaged in ‘misconduct’ because they are offering a vehicle ‘as is’ and without a warranty.”¹²¹

The Commission has decided against including the phrase “but you may have other legal rights and remedies for dealer misconduct,” as it had proposed in the SNPRM. The Commission agrees that the phrase may suggest that dealer misconduct exists or that consumers should look for it when none exists. Simplifying the description of an “As Is” sale to one in which the “dealer does not provide a warranty” should lessen the likelihood of consumer confusion and provide clearer guidance on whether a dealer affirmatively offers a warranty.

The Commission has decided to adopt a simplified “As Is” statement to address comments about whether the existing statement on the Buyers Guide clearly conveys that the dealer is not offering a warranty. The Commission has also considered the comments critical of various formulations of the phrase “regardless of any oral statements about the vehicle” and has decided to delete the phrase. The Commission notes that the Buyers Guide will continue to warn consumers that oral promises are difficult to enforce and to advise that consumers ask the dealer to put all promises in writing.

¹¹⁷ 79 FR at 70809.

¹¹⁸ The State AG Group proposed “But, you may have legal rights if the dealer concealed problems with the vehicle or its history.” State AG Group (2013) at 5.

¹¹⁹ Various commenters proposed additional revisions but also approved of the phrase “but you may have other legal rights and remedies for dealer misconduct.” *E.g.*, NCLC (2015) at 6–7; Steinbach (consumer attorney) (2015) at 7; State AG Group 015 at 4–5 (listing three acceptable alternatives: “however, you may have legal rights if the dealer concealed problems with the vehicle or its history”; “but you may have other legal rights if the dealer misrepresents the vehicle’s condition or engages in other misconduct”; “but you may have other legal rights and remedies for dealer misconduct”).

¹²⁰ NIADA (2015) at 7.

¹²¹ NADA (2015) at 18.

C. Non-Dealer Warranty Boxes

The proposed Buyers Guide in the SNPRM included boxes (“non-dealer warranty boxes”) that dealers could check to indicate whether an unexpired manufacturer warranty, a manufacturer used car warranty, or some other warranty applies, and whether a service contract is available. The version of the Buyers Guide proposed in the NPRM included similar boxes on the back of the Buyers Guide.¹²² NPRM commenters who addressed the non-dealer warranty boxes uniformly recommended moving the disclosures to the front of the Buyers Guide where they will be more accessible to consumers.¹²³ SNPRM commenters also favored the boxes and placing them on the front, although some of these commenters proposed modifications to the boxes and making disclosure of unexpired manufacturers’ warranties mandatory.

As suggested by the comments, the Commission has decided to make the non-dealer warranty boxes more prominent and accessible by moving them to the front of the Buyers Guide, as proposed in the SNPRM and shown in Figures 1 and 2. The Commission is also modifying the existing Rule’s description of a service contract as proposed in the SNPRM and making the service contract box flush with the non-dealer warranty boxes.¹²⁴

The Commission has also decided to modify the statement that dealers may use on the Buyers Guide to disclose the applicability of an unexpired manufacturer’s warranty.¹²⁵ In its NPRM comment, CAS suggested that the unexpired manufacturer’s warranty box should state that “[t]he manufacturer’s original warranty has not expired on

¹²² 77 FR at 74771 (Figure 3).

¹²³ *E.g.*, American Ass’n for Justice (2013) at 2; Bolliger (2013) (Florida attorney); CAS (2013) at 2; CARS (2013) at 8; Crabtree (2013); Domooske (2013); Elias (2013) (Florida Dep’t of Regulatory and Economic Resources—Consumer Protection); Kaufman (2013); Klarquist (2013); Kraft, Karen, Credit Counseling (2013); Richards, Casper & Casper (2013); Speer, James, Virginia Poverty Law Center (2013); Thomson (2013); Wells (2013); NACA (2013) at 2; Ohio Ass’n for Justice (2013) at 2; Wholesale Forms (2013) at 1, 2.

¹²⁴ The State AG Group suggested making the service contract box flush and clearly separated from the non-dealer warranty boxes. State AG (2015) at 5.

¹²⁵ 16 CFR 455.2(b)(v) permits dealers that wish to disclose the applicability of an unexpired manufacturer’s warranty to state “The manufacturer’s original warranty has not expired on the vehicle.”

The Final Rule permits dealers to use their existing stock of Buyers Guides for up to one year after the effective date of the Rule amendments. It includes a revised disclosure that dealers must use if they choose to disclose unexpired manufacturers’ warranties, or other non-dealer warranties, using those Buyers Guides.

some components of the vehicle” because, according to CAS, that language is “more consistent with the different coverages that are in current warranties.”¹²⁶ The AG Group also supported CAS’s proposed language.¹²⁷ In its comments on the SNPRM, CAS proposed an alternative, the “manufacturer’s warranty coverage period has not expired.”¹²⁸ As noted by CAS, the current language suggests that a manufacturer’s unexpired warranty is bumper-to-bumper coverage whereas only some components may be covered.¹²⁹

The Commission has decided to adopt the language initially proposed by CAS to disclose unexpired manufacturer’s warranties because the language more accurately describes that an unexpired manufacturer’s warranty typically refers to warranty coverage over some components of a used vehicle rather than the bumper-to-bumper coverage associated with a new vehicle. Accordingly, the amended Final Rule will provide dealers the ability to disclose that a “manufacturer’s original warranty has not expired on some components of the vehicle.”

For the reasons discussed in the NPRM, the Commission declines to make the disclosure of non-dealer warranties mandatory on the Buyers Guide.¹³⁰ The Commission believes that a statement on the Buyers Guide encouraging consumers to request more information about non-dealer warranties will help ensure that consumers are not deceived if the dealer chooses to use the existence of a non-dealer warranty as a selling point. To ensure that consumers understand the scope of any non-dealer warranty, the disclosure advises consumers to “ask the dealer for a copy of the warranty document and an

¹²⁶ CAS (2013) at 3.

¹²⁷ State AG Group (2015) at 3–6.

¹²⁸ CAS (2015) at 3. CAS also commented that the disclosure of an unexpired manufacturer’s warranty should be mandatory, and, if not made mandatory, the space on the front of the Buyers Guide should not be wasted on the disclosure.

¹²⁹ CAS (2015) at 4.

¹³⁰ 77 FR at 74753. As the Commission noted when it adopted the Rule in 1984, dealers subject to the Used Car Rule should be aware that the provisions of the Magnuson-Moss Warranty Act (“MMWA”) and the Commission’s rules interpreting the MMWA are fully applicable to any written warranty offered in connection with the sale of a used car. Used vehicle dealers should therefore consult the terms of the MMWA and the Commission’s rules interpreting the MMWA for a clear explanation of the duties arising under the MMWA. See 49 FR at 45,709 (citing 15 U.S.C. 2302–2308; 16 CFR parts 700 (interpretations of the MMWA); 701 (disclosure of written consumer product warranty terms and conditions); 702 (presale availability of written warranty terms); and 703 (informal dispute settlement procedures)).

explanation of warranty coverage, exclusions, and repair obligations.”¹³¹

D. Spanish Sales

The Commission has decided to add a revised statement, in Spanish, to the front of the English Buyers Guide advising Spanish-speaking consumers who cannot read the English Buyers Guide to ask for a copy of the Spanish Buyers Guide if the dealer conducts the sale in Spanish. A proposed Spanish statement was included in the Buyers Guide published with the NPRM and incorporated into the SNPRM Buyers Guide.¹³² The Rule prescribes a Spanish Buyers Guide and requires its use if a dealer conducts a sale in Spanish.¹³³ Dealers' groups commented that the proposed statement (“if you are unable to read this document in English, ask your salesperson for a copy in Spanish”) potentially could have expanded dealers' obligation to use Spanish Guides.¹³⁴ Recognizing this concern and not intending any change in the Rule's requirement regarding Spanish Buyers Guides, the Commission has changed the statement to advise consumers to ask for the Buyers Guide in Spanish if the dealer is conducting the sale in Spanish.

The Rule permits dealers to add an optional signature line to the back of the Buyers Guide where consumers can acknowledge receipt of the Buyers Guide.¹³⁵ As recommended by the Texas Automobile Dealers Association, the Commission has adopted a translation of the acknowledgment statement into the Final Rule.¹³⁶

E. Miscellaneous NPRM Buyers Guide Modifications Incorporated in the Final Rule

The Final Rule and Buyers Guide incorporate text and other modifications to the Buyers Guide that the Commission proposed in the NPRM. The Buyers Guide's statement advising consumers to ask the dealer about a mechanical inspection has been relocated above the proposed vehicle history information box to enhance its prominence.¹³⁷ The Final Rule retains the use of the terms “dealer warranty”

and “non-dealer warranty” proposed in the NPRM. Finally, the Buyers Guide incorporates the NPRM's proposed modifications to the description of “Implied Warranties Only” on the version of the Buyers Guide for use in jurisdictions that prohibit dealers from waiving implied warranties¹³⁸ and the description of a service contract on the front of the Buyers Guide.¹³⁹

In the NPRM, the Commission proposed adding air bags and catalytic converters, as part of the exhaust system, to the list of some major defects that may occur in used vehicles.¹⁴⁰ The Commission did not receive comments on the proposal. The revised Buyers Guide includes air bags and catalytic converters in the list of major defects.¹⁴¹

F. Modification of Service-Contract Provisions

When the Commission promulgated the Rule in 1984, the Commission noted that it did not intend to regulate those service contracts that are “excluded from the Commission's jurisdiction by the McCarran-Ferguson Act.”¹⁴² Consistent with that intent, the Commission has decided to adopt the revisions proposed in the SNPRM.¹⁴³ Therefore, § 455.1(d)(7) and § 455.2(b)(3) will be amended so that they correspond more closely with the statutory language of the McCarran-Ferguson Act.¹⁴⁴

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”)¹⁴⁵ requires that the Commission conduct an initial and a final analysis of the anticipated economic impact of the amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure the agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. The RFA¹⁴⁶ provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the amendments will not have a significant

economic impact on small entities, although they will likely affect a substantial number of small entities. The Rule, and the amendments, apply primarily to independent used vehicle dealers and franchised new vehicle dealers, which typically also sell used vehicles, such as vehicles traded for new car purchases. Most dealers would be classified as small businesses, as explained *infra*.

The amendments revise the Buyers Guide that the Rule requires dealers to display on used vehicles by changing pre-printed disclosures that appear on the Buyers Guide and adding boxes that dealers can check if they choose to disclose additional information concerning non-dealer warranties. Although the amendments will require that dealers eventually substitute the revised Buyers Guides, the amendments permit dealers to use their existing stock of Buyers Guides for up to one year after the effective date of these Rule amendments before doing so. The Rule already permits dealers to make the disclosures in the check boxes, but the check boxes will make the disclosures easier for those dealers who choose to make them. Therefore, the Commission certifies that amending the Rule will not have a significant economic impact on a substantial number of small businesses.

The Final Rule is similar to the rule proposed in the NPRM. In its Initial Regulatory Flexibility Analysis (“IRFA”), the Commission determined that the NPRM Proposed Rule was not likely to have a significant economic impact on a substantial number of small entities.¹⁴⁷ The only additional burden that the Final Rule, like the Proposed Rule, places on dealers is the substitution of new Buyers Guides for the ones that dealers currently use, but dealers will be permitted to use their existing stock of Buyers Guides for up to one year after the effective date of these Rule amendments. The new Buyers Guide makes disclosing non-dealer warranties easier for those dealers who choose to disclose them, but does not require additional disclosures regarding non-dealer warranties.

Although the Commission certifies under the RFA that the amendments will not have a significant impact on a substantial number of small entities, the Commission nonetheless has determined that publishing a final regulatory flexibility analysis (FRFA) is appropriate to ensure that the impact of the amendments is fully addressed.

¹³¹ See Figure 1.

¹³² See SNPRM Figures 1 and 2, 79 FR 70818–70819; NPRM Figures 1 and 2, 77 FR at 74769 and 74770.

¹³³ 16 CFR 455.5.

¹³⁴ NADA (2015) at 19, 20.

¹³⁵ 16 CFR 455.2(f).

¹³⁶ Texas Automobile Dealers Association (00032) at 4. See revised 16 CFR 455.5.

¹³⁷ The following statement has been on the Buyers Guide since the Rule's promulgation in 1984: ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT. See Figures 1 and 2.

¹³⁸ See 16 CFR 455.2(b)(1)(ii); Figure 2.

¹³⁹ *Id.*

¹⁴⁰ 77 FR at 74760.

¹⁴¹ See Figures 3 and 6 (Spanish).

¹⁴² Trade Regulation Rule Concerning Sale of Used Motor Vehicles, 49 FR 45692, 45709 (Nov. 19, 1984).

¹⁴³ 79 FR at 70810.

¹⁴⁴ 15 U.S.C. 1012(b).

¹⁴⁵ 5 U.S.C. 601–612.

¹⁴⁶ 5 U.S.C. 605.

¹⁴⁷ 77 FR 74765.

Therefore, the Commission has prepared the following analysis:

A. Need for and Objectives of the Amendments

The purpose of the amendments is to provide material information about vehicle histories and used car warranties to help protect consumers from dealer misrepresentations and to aid consumers in making informed choices when purchasing a used vehicle. In particular, the amendments seek to promote consumer awareness of vehicle history information, to clarify the meaning of “as is” in the sale of used vehicles without warranties, to make disclosures concerning non-dealer warranties more prominent, to improve Spanish-speaking consumers’ access to the Spanish Buyers Guide during sales conducted in Spanish, and to provide additional information about defects that may be found in used vehicles.

B. Significant Issues Raised in Public Comments

None of the comments disputed the Initial Regulatory Flexibility Analysis in the NPRM or in the SNPRM. In the SNPRM, the Commission proposed that dealers indicate on the Buyers Guide that they had obtained a VHR and, if so, provide a copy of the VHR to consumers upon request. Commenters questioned whether the cost of providing copies of VHRs to consumers should be borne by consumers or dealers. The Final Rule does not require dealers to provide copies of VHRs to consumers, but instead a pre-printed statement on the Buyers Guide recommends that consumers visit an FTC website to learn more about obtaining VHRs. Accordingly, the amendments will not require dealers to bear the cost of providing VHRs to consumers.

The Commission did not receive any comments from the Small Business Administration Chief Counsel for Advocacy.

C. Small Entities to Which the Amendments Will Apply

The Used Car Rule primarily applies to “dealers” defined as “any individual or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months.”¹⁴⁸ The Commission believes that many of these dealers are small businesses according to the applicable Small Business Administration (“SBA”) size standards. Under those standards, the SBA would classify as small businesses independent used car dealers having

annual receipts of less than \$25 million and franchised new car dealers, which also typically sell used cars, having fewer than 200 employees each.¹⁴⁹

Most independent used vehicle dealers would be classified as small businesses. In 2012, the United States’ 37,892 independent used vehicle dealers¹⁵⁰ had average total sales of \$4,228,137.¹⁵¹ These used vehicle dealers’ average annual revenue is well below the maximum \$25 million in annual sales established by the SBA for classification as a small business. Therefore, these used vehicle dealers would be classified as small businesses.

The SBA would also classify many franchised new car dealers as small businesses. In 2015, the nation’s 16,545 franchised new car dealers¹⁵² had an average of sixty-seven employees,¹⁵³ well below the 200-employee maximum established by the SBA for classification as a small business.¹⁵⁴

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

The Used Car Rule imposes disclosure obligations on used vehicle dealers, but does not impose any reporting or recordkeeping requirements. Specifically, the Rule requires dealers to complete and to display a Buyers Guide on each used car offered for sale. Neither the existing Rule nor the Final Rule requires dealers to disclose non-dealer warranties. Under the existing Rule, dealers who choose to disclose non-dealer warranties, in particular, unexpired manufacturer’s warranties, may do so by adding a statement to the Buyers Guide that is prescribed by the Rule. The Final Rule permits dealers to disclose unexpired manufacturer’s warranties and other third-party warranties, but does not require that dealers make those disclosures. For those dealers who choose to disclose non-dealer warranties, the Final Rule should make the disclosure easier because dealers can make the

disclosures by checking a box on the Buyers Guide rather than adding a statement prescribed by the Rule.

In other **Federal Register** submissions, the Commission has concluded that professional skills needed to comply with the rule are possessed by clerical or administrative staff.¹⁵⁵ The professional skills necessary to comply with the Rule as modified by the amendments are the same as those necessary to comply with the existing Rule.

E. Significant Alternatives to the Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives because the amendments simply modify the pre-printed disclosures that dealers are already required to make in connection with offering used cars for sale.

The Commission believes that the Final Rule will help reduce potential deception by promoting consumer awareness of vehicle history information, consumer understanding of the meaning of “As Is” in used vehicle sales transactions in which a dealer disclaims warranties, and consumer awareness of warranties that may apply to a used vehicle. The revised Buyers Guide contains pre-printed statements that direct consumers to consumer-oriented websites for additional information, including live links to outside sources of information. The Rule also requires dealers to complete parts of the Buyers Guide by, among other things, listing the VIN and indicating the warranty coverage, if any, that applies to the vehicle. A downloadable, fillable version of the revised Buyers Guide is available on the Commission’s Web site.

The Rule also provides that the Buyers Guide is incorporated into the sales contract. The Rule requires that dealers complete a Buyers Guide for each used vehicle offered for sale, display a physical Buyers Guide on the vehicle, and provide a copy of that Buyers Guide to consumers. Therefore, consumers are able to see the Buyers Guide disclosures upon even a casual inspection of a used vehicle that they are considering buying. Consumers likely expect to see a physical label on used cars because disclosure labels (“Monroney” stickers) are required to be affixed to new cars.¹⁵⁶ In staff’s enforcement experience, used vehicle dealers routinely place point of sale

¹⁴⁹ *Table of Small Bus. Size Standards Matched to North American Indus. Classification System Codes*, 13 CFR 121.201 (available at: <https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-stand>), updated Feb. 26, 2016. Used car dealers are classified as NAICS 441120 and franchised new car dealers as NAICS 441110.

¹⁵⁰ *NIADA Used Car Industry Report 2013*, at 16. The most recent figures published by NIADA are for 2012.

¹⁵¹ *Id.* at 20. Used vehicle sales accounted for 38.29% (\$1,618,954) of those sales.

¹⁵² *NADA Data 2015* at 3. (available at: <https://www.nada.org/nadadata/>).

¹⁵³ *Id.* at 17.

¹⁵⁴ *Table of Small Bus. Size Standards* at 23.

¹⁵⁵ See, e.g., 79 FR 70814, note 101; Request for Extension of Clearance, 78 FR 59032, 59033 (Sept. 25, 2013).

¹⁵⁶ See 15 U.S.C. 1232.

¹⁴⁸ 16 CFR 455.1(d)(3).

advertising statements (e.g., “low miles,” “one owner”) directly on vehicles to capture consumers’ attention. Similarly, the Commission continues to believe that a Buyers Guide displayed on a used vehicle will most effectively capture a consumer’s attention.

The Commission considered several different approaches to vehicle history information discussed in the comments. In the SNPRM, the Commission proposed requiring dealers who have VHRs to disclose that fact on the Buyers Guide and to provide copies of the reports to requesting consumers. In the NPRM, the Commission proposed placing a statement on the Buyers Guide that would advise consumers about the availability of vehicle history information and direct consumers to an FTC website for more information. The Commission also considered requiring dealers to obtain VHRs, such as NMVTIS reports, and requiring dealers to make disclosures similar to those required by California’s AB 1215. Currently consumers can gain access to VHRs at no cost from many dealers, automobile marketplace websites, buying services, etc., and from commercial vendors at a nominal cost. Given the availability of various sources for and types of VHRs, the Commission has chosen not to require that dealers obtain reports or to designate specific types of reports or specific vendors. In doing so, the Commission sought to balance the burden placed on dealers with the goals of promoting consumer choice and access to vehicle history information.

The Commission considered comments on the Buyers Guide “As Is” statement and the various formulations of the statement proposed by the comments. The Commission chose the “As Is” statement in this Final Rule because the Commission believes that the statement clearly and accurately describes the meaning of “As Is.”

The Commission considered comments on the non-dealer warranty boxes proposed in the NPRM. In response to those comments, the Commission has moved those boxes to the front of the Buyers Guide.

Under these circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the amendments.

IV. Regulatory Analysis

Under section 22 of the FTC Act, the Commission must issue a regulatory

analysis for a proceeding to amend a rule only when it: (1) Estimates that the amendment will have an annual effect on the national economy of \$100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers.

After careful consideration of the comments, and the record as a whole, the Commission has determined that there are no facts in the record, or other reasons to believe, that these amendments will have significant effects on the national economy, on the cost of goods or services, or on covered parties or consumers. No commenter provided a cost estimate of the amendments. Moreover, none indicated that the amendments would have an annual impact of more than \$100,000,000, cause substantial change in the cost of goods or services, or otherwise have a significant effect upon covered entities or consumers.

In any event, to the extent, if any, these final rule amendments will have such effects, the Commission has explained above the need for, and the objectives of, the final amendments; the regulatory alternatives that the Commission considered; the projected benefits and adverse economic or other effects, if any, of the amendments; the reasons that the final amendments will attain their intended objectives in a manner consistent with applicable law; the reasons for the particular amendments that the agency has adopted; and the significant issues raised by public comments, including the Commission’s assessment of and response to those comments on those issues.

V. Paperwork Reduction Act

The existing Rule contains no recordkeeping or reporting requirements, but it does contain disclosure requirements that constitute “information collection requirements” as defined by 5 CFR 1320.3(c) under the Office of Management and Budget (“OMB”) regulations that implement the Paperwork Reduction Act (“PRA”). OMB has approved the Rule’s existing information collection requirements through Jan. 31, 2017 (OMB Control No. 3084–0108).

As discussed above, the Commission is retaining the requirement that dealers must display a Buyers Guide on used cars offered for sale and is updating the text of the disclosures that dealers must provide in the Buyers Guide. The

Commission is also amending the Buyers Guide to provide dealers with a method to disclose optional additional information about non-dealer warranties. The amendments about non-dealer warranties do not require dealers to disclose this additional information nor do they alter the Rule’s existing disclosure requirements or impose recordkeeping requirements.

The Commission has made amended Buyers Guides available on its Web site for downloading by dealers free of charge. The Commission expects that current suppliers of Buyers Guides, such as commercial vendors and dealer trade associations, will supply dealers with amended Buyers Guides. Accordingly, individual dealer cost to obtain amended Buyers Guides should increase only marginally, if at all.

As explained in the NPRM, FTC staff has estimated that dealers will make the optional disclosures on 25% of used cars offered for sale. Dealers who choose to make the optional disclosures should obtain amended Buyers Guides and complete them by checking additional boxes not appearing on the current Buyers Guide. Staff has in the past estimated that completing Buyers Guides requires approximately 2 minutes per vehicle for vehicles sold without a warranty and 3 minutes per vehicle for vehicles sold with a warranty.¹⁵⁷ Staff believes that checking the additional boxes should require dealers no more than an additional 30 seconds per vehicle.¹⁵⁸ Thus, based on 27,966,551 used cars sold,¹⁵⁹ making the optional disclosures presented by the amendments would increase estimated burden by 58,264 hours (25% × 27,966,551 vehicles sold × 1/120 hour per vehicle).

Staff also anticipates that dealers can use lower level clerical staff at a mean hourly wage of \$15.33 per hour¹⁶⁰ to

¹⁵⁷ See, e.g., 78 FR 59032, 59032 (Sept. 25, 2013) (Notice: “Agency Information Collection Activities; Proposed Collection; Comment Request; Extension.”).

¹⁵⁸ Previously, dealers who opted to disclose the applicability of manufacturers’ warranties could do so by adding a statement to the Buyers Guide, 16 CFR 455.2(2)(b)(v), which likely would take longer than simply checking a box to make the same disclosure. The projected increment of 30 seconds is a combined reflection of time saved through the latter means and the incremental time accorded to checking off additional boxes tied to new disclosures under the Final Rule.

¹⁵⁹ NADA’s *Used Car Industry Report 2016*, at 31 (citing NADA data for the total number of used vehicles sold by franchised and independent dealers in 2015).

¹⁶⁰ The hourly rate is based on the Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general. *Occupational Employment and Wages, May 2015, 43–9061 Office Clerks,*

complete the Buyers Guides, so incremental labor costs associated with making the optional disclosures will total \$893,187 per year [58,264 hours × \$15.33 per hour].

Estimating, as stated above, that dealers will make the optional disclosures on 25% of the 27,966,551 used cars offered for sale, and assuming further a cost of thirty cents per preprinted Buyers Guide, incremental purchase costs per year will total \$2,097,491. Any other capital costs associated with the amendments are likely to be minimal. This analysis is consistent with the analysis provided in the NPRM, but has been updated with more recent data regarding the number of used vehicles sold and labor costs tied to making the optional disclosures for those sales. None of the comments disputed the PRA analysis in the NPRM.

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends part 455 of title 16, Code of Federal Regulations, as follows:

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

■ 1. The authority citation for part 455 continues to read as follows:

Authority: 15 U.S.C. 2309; 15 U.S.C. 41–58.

■ 2. Amend § 455.1 by revising paragraph (d)(7) to read as follows:

§ 455.1 General duties of a used vehicle dealer; definitions.

* * * * *

(d) * * *

(7) *Service contract* means a contract in writing for any period of time or any specific mileage to refund, repair, replace, or maintain a used vehicle and provided at an extra charge beyond the price of the used vehicle, unless offering such contract is “the business of insurance” and such business is regulated by State law.

* * * * *

■ 3. Amend § 455.2 by revising paragraph (a) introductory text, paragraph (a)(2), and paragraph (b) to read as follows:

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle the applicable “Buyers Guide” illustrated by Figures 1–2 at the end of this part. Dealers may

use remaining stocks of the version of the Buyers Guide in effect prior to the effective date of this Rule for up to one year after that effective date (*i.e.*, until January 27, 2018). Dealers who opt to use their existing stock and choose to disclose the applicability of a non-dealer warranty, must add the following as applicable below the “Full/Limited Warranty” disclosure: “Manufacturer’s Warranty still applies. The manufacturer’s original warranty has not expired on the vehicle;” “Manufacturer’s Used Vehicle Warranty Applies;” or “Other Used Vehicle Warranty Applies,” followed by the statement, “Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.”

* * * * *

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated. When filling out the form, follow the directions in paragraphs (b) through (f) of this section and § 455.4.

(b) *Warranties—“As Is”/No Dealer Warranty.*

(i) If you offer the vehicle without any implied warranty, *i.e.*, “as is,” mark the box appearing in Figure 1. If you offer the vehicle with implied warranties only, substitute the IMPLIED WARRANTIES ONLY disclosure specified in paragraph (b)(1)(ii) of this section, and mark the IMPLIED WARRANTIES ONLY box illustrated by Figure 2. If you first offer the vehicle “as is” or with implied warranties only but then sell it with a warranty, cross out the “As Is—No Dealer Warranty” or “Implied Warranties Only” disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your State law limits or prohibits “as is” sales of vehicles, that State law overrides this part and this rule does not give you the right to sell “as is.” In such States, the heading “As Is—No Dealer Warranty” and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted as illustrated in the Buyers Guide in Figure 2. If you sell vehicles in States that permit “as is” sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of “As Is—No Dealer Warranty” as illustrated by the Buyers Guide in

Figure 2. See § 455.5 for the Spanish version of this disclosure.

IMPLIED WARRANTIES ONLY

The dealer doesn’t make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state’s laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) *Full/Limited Warranty.* If you offer the vehicle with a warranty, briefly describe the warranty terms in the space provided. This description must include the following warranty information:

(i) Whether the warranty offered is “Full” or “Limited.” Mark the box next to the appropriate designation. A “Full” warranty is defined by the Federal Minimum Standards for Warranty set forth in section 104 of the Magnuson-Moss Act, 15 U.S.C. 2304 (1975). The Magnuson-Moss Act does not apply to vehicles manufactured before July 4, 1975. Therefore, if you choose not to designate “Full” or “Limited” for such vehicles, cross out both designations, leaving only “Warranty.”

(ii) Which of the specific systems are covered (for example, “engine, transmission, differential”). You cannot use shorthand, such as “drive train” or “power train” for covered systems.

(iii) The duration (for example, “30 days or 1,000 miles, whichever occurs first”).

(iv) The percentage of the repair cost paid by you (for example, “The dealer will pay 100% of the labor and 100% of the parts.”)

(v) You may, but are not required to, disclose that a warranty from a source other than the dealer applies to the vehicle. If you choose to disclose the applicability of a non-dealer warranty, mark the applicable box or boxes beneath “NON-DEALER WARRANTIES FOR THIS VEHICLE” to indicate: “MANUFACTURER’S WARRANTY STILL APPLIES. The manufacturer’s original warranty has not expired on some components of the vehicle,” “MANUFACTURER’S USED VEHICLE WARRANTY APPLIES,” and/or “OTHER USED VEHICLE WARRANTY APPLIES.”

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the “As Is—No Dealer Warranty” box or the “Implied Warranties Only” box, as appropriate.

(3) *Service contracts.* If you make a service contract available on the vehicle,

you must add the following heading and paragraph below the Non-Dealer Warranties Section and mark the box labeled "Service Contract," unless offering such service contract is "the business of insurance" and such business is regulated by State law. See § 455.5 for the Spanish version of this disclosure.

SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

* * * * *

■ 3. Revise § 455.5 to read as follows:

§ 455.5 Spanish language sales.

(a) If you conduct a sale in Spanish, the window form required by § 455.2

and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the translation and layout for Spanish language sales in Figures 4, 5, and 6.

(b) Use the following language for the "Implied Warranties Only" disclosure when required by § 455.2(b)(1) as illustrated by Figure 5:

SOLO GARANTÍAS IMPLÍCITAS

El concesionario no hace ninguna promesa de reparar lo que sea necesario cuando compre el vehículo o posteriormente. Sin embargo, las *garantías implícitas* según las leyes estatales podrían darle algunos derechos para hacer que el concesionario se encargue de ciertos problemas que no fueran evidentes cuando compró el vehículo.

(c) Use the following language for the "Service Contract" disclosure required

by § 455.2(b)(3) as illustrated by Figures 4 and 5:

CONTRATO DE MANTENIMIENTO. Con un cargo adicional, puede obtener un contrato de mantenimiento para este vehículo. Pregunte acerca de los detalles de la cobertura, los deducibles, el precio y las exclusiones. Si compra un contrato de mantenimiento dentro de los 90 días desde el momento en que compró el vehículo, las *garantías implícitas* según las leyes de su estado podrían darle derechos adicionales.

(d) Use the following language if you choose to use the Optional Signature Line provided by § 455.2(f):

Por este medio confirmo que he recibido copia de la Guía del Comprador al momento de la compraventa.

■ 4. Add Figures 1 through 6 to part 455 to read as follows:

BILLING CODE 6750-01-P

FIGURE 1 TO PART 455 – “AS IS” - NO DEALER WARRANTY Buyers Guide

(English)

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE	MODEL	YEAR	VEHICLE IDENTIFICATION NUMBER (VIN)
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WARRANTIES FOR THIS VEHICLE:

AS IS - NO DEALER WARRANTY
 THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.

DEALER WARRANTY

FULL WARRANTY.

LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED: _____ **DURATION:** _____

NON-DEALER WARRANTIES FOR THIS VEHICLE:

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.

MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.

OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT.

OBTAIN A VEHICLE HISTORY REPORT AND CHECK FOR OPEN SAFETY RECALLS. For information on how to obtain a vehicle history report, visit ftc.gov/usedcars. To check for open safety recalls, visit safecar.gov. You will need the vehicle identification number (VIN) shown above to make the best use of the resources on these sites.

SEE OTHER SIDE for important additional information, including a list of major defects that may occur in used motor vehicles.

Si el concesionario gestiona la venta en español, pídale una copia de la Guía del Comprador en español.

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8.5 pt regular, italic, caps & lc

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9 pt bold caps, 2 columns

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* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 2 TO PART 455 – IMPLIED WARRANTIES ONLY Buyers Guide (English)

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE	MODEL	YEAR	VEHICLE IDENTIFICATION NUMBER (VIN)
--------------	-------	------	-------------------------------------

WARRANTIES FOR THIS VEHICLE:

IMPLIED WARRANTIES ONLY

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

DEALER WARRANTY
 FULL WARRANTY.
 LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED: _____ **DURATION:** _____

NON-DEALER WARRANTIES FOR THIS VEHICLE:

 MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.
 MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.
 OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

 SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

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 10.8 pt leading

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 3 TO PART 455 – Back of Buyers Guide (English)

Here is a list of some major defects that may occur in used vehicles.

<p>Frame & Body Frame-cracks, corrective welds, or rusted through Dog tracks—bent or twisted frame</p> <p>Engine Oil leakage, excluding normal seepage Cracked block or head Belts missing or inoperable Knocks or misses related to camshaft lifters and push rods Abnormal exhaust discharge</p> <p>Transmission & Drive Shaft Improper fluid level or leakage, excluding normal seepage Cracked or damaged case which is visible Abnormal noise or vibration caused by faulty transmission or drive shaft Improper shifting or functioning in any gear Manual clutch slips or chatters</p> <p>Differential Improper fluid level or leakage, excluding normal seepage Cracked or damaged housing which is visible Abnormal noise or vibration caused by faulty differential</p>	<p>Cooling System Leakage including radiator Improperly functioning water pump</p> <p>Electrical System Battery leakage Improperly functioning alternator, generator, battery, or starter</p> <p>Fuel System Visible leakage</p> <p>Inoperable Accessories Gauges or warning devices Air conditioner Heater & Defroster</p> <p>Brake System Failure warning light broken Pedal not firm under pressure (DOT spec.) Not enough pedal reserve (DOT spec.) Does not stop vehicle in straight line (DOT spec.)</p> <p>Hoses damaged Drum or rotor too thin (Mfr. Specs) Lining or pad thickness less than 1/32 inch Power unit not operating or leaking Structural or mechanical parts damaged</p> <p>Air Bags</p>	<p>Steering System Too much free play at steering wheel (DOT specs.) Free play in linkage more than 1/4 inch Steering gear binds or jams Front wheels aligned improperly (DOT specs.) Power unit belts cracked or slipping Power unit fluid level improper</p> <p>Suspension System Ball joint seals damaged Structural parts bent or damaged Stabilizer bar disconnected Spring broken Shock absorber mounting loose Rubber bushings damaged or missing Radius rod damaged or missing Shock absorber leaking or functioning improperly</p> <p>Tires Tread depth less than 2/32 inch Sizes mismatched Visible damage</p> <p>Wheels Visible cracks, damage or repairs Mounting bolts loose or missing</p> <p>Exhaust System Leakage Catalytic Converter</p>
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DEALER NAME _____

ADDRESS _____

TELEPHONE _____ EMAIL _____

FOR COMPLAINTS AFTER SALE, CONTACT: _____

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (16 C.F.R. 455).

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 0.5 pt rules
 8 pt regular, caps
 25 pts between rules

2 pt rule
 9 pt bold & regular, caps & lc
 10.8 pt leading

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 4 TO PART 455 – “AS IS”- NO DEALER WARRANTY Buyers Guide

(Spanish)

GUÍA DEL COMPRADOR

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al concesionario que ponga todas las promesas por escrito. Conserve este formulario.

MARCA DEL VEHÍCULO _____ MODELO _____ AÑO _____ NÚMERO DE IDENTIFICACIÓN DEL VEHÍCULO (VIN) _____

GARANTÍAS PARA ESTE VEHÍCULO:

COMO ESTÁ - SIN GARANTÍA DEL CONCESIONARIO
 EL CONCESIONARIO NO PAGARÁ NINGUNA REPARACIÓN. El concesionario no provee una garantía para reparaciones hechas después del momento de la venta.

GARANTÍA DEL CONCESIONARIO

GARANTÍA COMPLETA.

GARANTÍA LIMITADA. El concesionario pagará el _____% de la mano de obra y el _____% de las partes de los sistemas cubiertos que fallen durante el período de garantía. Pídale al concesionario una copia de la garantía y de cualquier documento que le explique la cobertura, las exclusiones y las obligaciones de reparación del concesionario. Las *garantías implícitas*, según las leyes de su estado, podrían darle derechos adicionales.

SISTEMAS CUBIERTOS: _____ **DURACIÓN:** _____

GARANTÍAS QUE NO PERTENECEN AL CONCESIONARIO:

LA GARANTÍA DEL FABRICANTE TODAVÍA APLICA. La garantía original del fabricante no ha expirado para algunos de los componentes del vehículo.

SE APLICA LA GARANTÍA DEL FABRICANTE PARA VEHÍCULOS USADOS.

SE APLICA OTRA GARANTÍA PARA VEHÍCULOS USADOS.

Pídale al concesionario una copia del documento de garantía y una explicación de la cobertura, las exclusiones y las obligaciones de reparación.

CONTRATO DE MANTENIMIENTO. Con un cargo adicional, puede obtener un contrato de mantenimiento para este vehículo. Pregunte acerca de los detalles de la cobertura, los deducibles, el precio y las exclusiones. Si compra un contrato de mantenimiento dentro de los 90 días desde el momento en que compró el vehículo, las *garantías implícitas* según las leyes de su estado podrían darle derechos adicionales.

PREGÚNTELE AL CONCESIONARIO SI SU MECÁNICO PUEDE INSPECCIONAR EL VEHÍCULO DENTRO O FUERA DEL CONCESIONARIO.

OBTENGA UN INFORME DEL HISTORIAL DEL VEHÍCULO Y VERIFIQUE SI EXISTEN RETIROS POR DEFECTOS DE SEGURIDAD PENDIENTES. Para información sobre cómo obtener un Informe del Historial del Vehículo, visite el sitio ftc.gov/carrosusados. Para verificar si existen retiros por defectos de seguridad pendientes, visite safercar.gov. Para aprovechar al máximo los recursos de estos sitios necesitará el número de identificación de vehículo (VIN) mostrado anteriormente.

CONSULTE EL DORSO para obtener más información, incluyendo una lista de defectos importantes que pueden ocurrir en vehículos de motor usados.

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* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 6 TO PART 455 – Back of Buyers Guide (Spanish)

A continuación podrá encontrar una lista de los defectos principales que podrían ocurrir en vehículos usados.

<p>Chasis y carrocería Grietas en el chasis, soldaduras correctivas u oxidadas Descuadrado: chasis doblado o torcido</p> <p>Motor Pérdidas de aceite, excepto las filtraciones normales Bloque o cárter con grietas Correas ausentes o fuera de servicio Golpes o fallas relacionados con levantadores de levas o bielas Descarga del escape fuera de lo normal</p> <p>Transmisión y eje motor Nivel inadecuado de fluido o pérdidas excepto filtraciones normales Grietas o daños visibles en la caja Ruidos o vibraciones fuera de lo normal ocasionadas por la transmisión o el eje motor Cambios o funcionamiento inadecuados en cualquier velocidad Patnados o vibraciones del embrague manual</p> <p>Diferencial Nivel inadecuado de fluido o pérdidas excepto filtraciones normales Grietas o daños visibles en el cárter del diferencial Ruidos o vibraciones fuera de lo normal ocasionadas por fallas en el diferencial.</p>	<p>Sistema de enfriamiento Pérdidas, incluidas las del radiador Funcionamiento inadecuado de la bomba de agua</p> <p>Sistema eléctrico Pérdidas en la batería Funcionamiento inadecuado del alternador, generador, batería o arrancador</p> <p>Sistema de combustible Pérdidas visibles</p> <p>Accesorios fuera de servicio Indicadores o dispositivos de advertencia Aire acondicionado Calefacción y Desempeñador</p> <p>Sistema de frenos Luz de advertencia de fallas ruta Falta de firmeza cuando se presiona el pedal (según especificaciones del Departamento de Transporte (DOT)) Distancia insuficiente del pedal (según especificaciones del DOT) El vehículo no se detiene en línea recta (según especificaciones del DOT) Mangueras dañadas Tambor o rotor muy delgados (según especificaciones del fabricante) Grosor de la placa o del revestimiento inferior que 1/32 pulgadas Unidad de potencia fuera de servicio o con pérdidas Partes estructurales o mecánicas dañadas</p> <p>Bolsas de aire</p>	<p>Sistema de dirección Demasiado juego en el volante (según especificaciones del DOT) Juego mayor a 1/4 de pulgada en el volante. El mecanismo de dirección se trava Alineación inadecuada de las ruedas frontales (según especificaciones del DOT) Grietas o desajustes en las correas de la unidad de potencia Nivel inadecuado de fluidos de la unidad de potencia</p> <p>Sistema de suspensión Juntas de rótula dañadas Patas estructurales dobladas o dañadas Barra estabilizadora desconectada Resorte roto Cojinete del amortiguador suelto Cojinetes de caucho dañados o ausentes Biela dañada o ausente Amortiguador con pérdidas o con funcionamiento inadecuado</p> <p>Neumáticos Profundidad de las ranuras menor que 2/32 de pulgada Tamaños que no corresponden Daños visibles</p> <p>Ruedas Grietas, daños o reparaciones visibles Tornillos de sujeción sueltos o ausentes</p> <p>Sistema de escape Pérdidas Convertidor catalítico</p>
--	--	---

NOMBRE DEL CONCESIONARIO _____

DIRECCIÓN DEL CONCESIONARIO _____

TELÉFONO _____ CORREO ELECTRÓNICO _____

PARA QUEJAS DESPUÉS DE LA VENTA COMUNIQUESE CON: _____

IMPORTANTE: La información de este formulario es parte de cualquier contrato para comprar este vehículo. Quitar esta etiqueta antes de la compra del consumidor (excepto a los fines de realizar una prueba de conducción) es una infracción a la ley federal (16 C. F. R. 455).

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8 pt regular, caps

25 pts between rules

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9 pt bold & regular, caps & lc

10.8 pt leading

* Typeface is Arial, text is flush left unless otherwise noted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016-27694 Filed 11-17-16; 8:45 am]

BILLING CODE 6750-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201 and 211

[Docket No. FDA-2005-N-0343]

RIN 0910-AC53

Medical Gas Containers and Closures; Current Good Manufacturing Practice Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is

amending its current good manufacturing practice (CGMP) and labeling regulations regarding medical gases. FDA is requiring that portable cryogenic medical gas containers not manufactured with permanent gas use outlet connections have gas-specific use outlet connections that cannot be readily removed or replaced except by the manufacturer. FDA is also requiring that portable cryogenic medical gas containers and high-pressure medical gas cylinders meet certain labeling, naming, and color requirements. These requirements are intended to increase the likelihood that the contents of medical gas containers are accurately identified and reduce the likelihood of the wrong gas being connected to a gas