

NADA stated that the Rule is meeting the objectives of the law and is not a substantial burden on small dealers.⁸³ Iowa's Attorney General noted that the costs associated with Rule compliance are minimal and are passed on to the consumer.⁸⁴ However, Iowa's comment also stated that larger firms are better able to absorb the costs of compliance. Reynolds & Reynolds noted that the costs of compliance include the costs of the form and the time required to fill them out properly. These costs differ from small firms to large firms because a larger firm most likely can take advantage of volume purchases and afford a computer to print out the form, while a smaller dealer would be more likely to purchase Buyers Guides in smaller quantities and fill them out by hand.⁸⁵

The majority of the comments that responded to these questions, however, contended that the burdens or costs associated with compliance are minimal.⁸⁶ For example, Reynolds & Reynolds reported that used car dealers can purchase Buyers Guides for an average cost of 7.6 cents.⁸⁷ While Reynolds & Reynolds believes the costs are so minimal that they are not passed along to the consumer, NIADA stated that they are.⁸⁸

Two comments from Attorneys General addressed whether the burdens and costs of the Rule would be similar to those incurred under ordinary and prudent business practice. The Iowa Attorney General noted that the Used Car Rule imposes no costs other than those a prudent dealer would incur regardless of the Rule.⁸⁹ The Washington Attorney General stated that the burdens or costs should be similar to those that would be incurred by prudent businesses.⁹⁰

In terms of benefits, Iowa's Attorney General noted that the Rule has undoubtedly benefited both the manufacturers and dealers by fostering

competition regarding warranty coverage.⁹¹ The comments generally suggested that the Rule also has eliminated many disputes regarding oral representations made by dealers concerning warranty coverage.⁹² For example, Reynolds & Reynolds noted that the Rule removes the question as to whether or not a specific vehicle has a warranty.⁹³ Compliance with the Rule virtually assures that consumers are aware of available warranty coverage, and therefore consumers are significantly protected against dealer misrepresentations.⁹⁴

ii. *Discussion.* Based on the information obtained in response to the Notice, the Commission has concluded that the costs and burdens associated with Rule compliance are not substantial. Although the costs or burdens of complying with the Rule may be marginally greater on smaller dealers that have fewer employees than larger dealerships, the costs associated with compliance are still quite small. The cost for Buyers Guides averages 7.6 cents per form, and other costs associated with the Rule (i.e., filling out the Buyers Guide and posting them), although not quantified, were represented as minimal and reasonable. At the same time, the comments contended that there are benefits from Rule compliance. Accordingly, the Commission has determined that no changes are needed to reduce the costs of the Rule on small businesses.

Further, although compliance with the Rule may be more burdensome and costly to dealers who frequently conduct sales transactions in Spanish, TADA's proposed solution (elimination of the requirement to post Spanish Buyers Guides) contravenes the Commission's rationale for the posting requirement.⁹⁵ Providing a Buyers Guide at the time of sale is insufficient to protect against the unfair and deceptive practices the Rule was designed to deter. By requiring posting, the Rule affords buyers an opportunity to comparison shop. Accordingly, the

Commission has decided to take no action.

Question Five

Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

i. *Summary of Comments.* In terms of "overlap," NCLC stated: There really is no overlap with state consumer protection laws (unfair and deceptive acts and practices statutes) because not all states' laws cover all violations of the Used Car Rule. The Used Car Rule itself merely effectuates a claim under a deceptive practices act in some states, by declaring certain conduct to be unfair or deceptive, which may then be prohibited by the state law.⁹⁶

NIADA stated, however, that there may be possible overlap with Texas's Deceptive Trade Practices Act.⁹⁷ Iowa's Attorney General noted that the Rule overlaps with the Iowa Consumer Fraud Act, Iowa Code 714.16, to the extent that the Consumer Fraud Act requires that sellers of merchandise not fail to disclose material facts with the intent that others rely on the omission.⁹⁸ Although the two overlap, Iowa believed it presents no problem to either the Commission or the State of Iowa in the enforcement of the Rule or the Iowa Consumer Fraud Act.⁹⁹

Alaska's Attorney General believed there is a "gap" in the Rule that has been addressed in state court decisions.¹⁰⁰ TADA noted that the Rule's definition of a "used vehicle" and the State of Texas's definition cause problems because the Commission's definition of "used vehicle" is much broader than that of some states, including Texas.¹⁰¹ According to TADA this causes confusion and misunderstanding as to when a vehicle is required to display a Buyers Guide.¹⁰²

NACAA stated that the Rule conflicts with some state laws by providing that the language in the Buyers Guide overrides contrary provisions in the contract of sale.¹⁰³ The Washington

regard to the differing costs between large and small firms, the trade association noted that both size firms need to fill out a certain number of forms for each vehicle they sell. The larger dealers have more employees to do the job.

⁸³ B-19 at 1.

⁸⁴ B-15 at 6.

⁸⁵ B-20 at 2.

⁸⁶ See, e.g., B-20 at 1.

⁸⁷ B-20 at 1. See also NIADA, B-07 at 2. Buyers Guides may be purchased in packets of 250 for \$21.00.

⁸⁸ *Id.* NIADA also noted that labor costs are associated with compliance, but did not quantify those costs.

⁸⁹ B-15 at 6.

⁹⁰ B-17 at 4. But stricter compliance with Washington law on the disclaimer of implied warranties could increase the costs of repair or recision to dealers who market unmerchantable vehicles.

⁹¹ B-15 at 4.

⁹² See NIADA Comment, B-7 at 4-5.

⁹³ B-20 at 1.

⁹⁴ B-15 at 4.

⁹⁵ The Commission originally considered requiring Buyers Guides to be translated into several dozen languages. However, "[t]he evidence in the [rulemaking] record indicates that, besides English, Spanish is the language most frequently used during used car sales transaction." SBP at 45711 (footnote omitted). Thus, the Rule requires the window form and the content disclosures to be in Spanish, if the sale is conducted in Spanish. Dealers who conduct transactions in both English and Spanish may post both versions of the Buyers Guide.

⁹⁶ B-23 at 5.

⁹⁷ B-07 at 5.

⁹⁸ Warranty coverage on a motor vehicle is considered to be a material fact under Iowa law.

⁹⁹ B-15 at 5.

¹⁰⁰ The "gap" relates to the Rule's failure to require dealers to disclose known defects. The AG asserts that the common law of most states requires disclosure. See, e.g., *Patton v. McHone*, 822 S.W.2d 608 (Tenn. App. 1991). B-01 at 1.

¹⁰¹ See also discussion at Part IV, Question 2, B, 2-3, *supra*, regarding the difference between the Rule's definition of a "used vehicle," and the state law definitions.

¹⁰² B-11 at 2.

¹⁰³ B-24 at 2, citing section 455.3(b) of the Rule. NACAA also contended that the provision may be used by dealers to disclaim promises of greater warranty protection in oral or written form. This