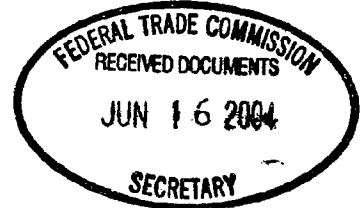


WHANN & ASSOCIATES, LLC
ATTORNEYS AT LAW

KEITH E. WHANN
DEANNA L. STOCKAMP
JONATHAN R. FULKERSON
JAY F. MCKIRAHAN
of Counsel

6300 FRANTZ ROAD
DUBLIN, OHIO 43017
(614) 764-7440
FAX (614) 764-0091



June 15, 2004

Federal Trade Commission/Office of the Secretary
Room 159-H (Annex H)
600 Pennsylvania Avenue N.W.
Washington, D.C. 20580

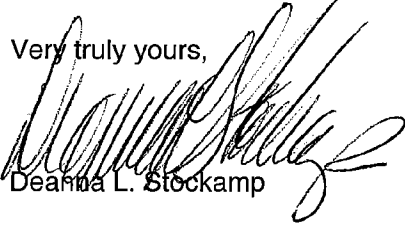
Re: The FACT Act Disposal Rule, R-411007

Dear Sir or Madam:

Please find enclosed herewith a copy of the National Independent Automobile Dealers Association's (NIADA) Comments Regarding The FACT Act Disposal Rule, R-411007. A copy of the Comments have also been faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget at (202) 395-6974. We attempted multiple times to submit the Comments through the Regulations.Gov web site (a copy of which is also enclosed), but encountered an error message on each attempt.

If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,


Deanna L. Stockamp

DLS/jbg

Enclosures

The FACT Act Disposal Rule, R-411007

COMMENTS OF THE NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION DIRECTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580

SECTION A. BACKGROUND

On December 4, 2003, President Bush signed into law the Fair and Accurate Credit Transactions Act (FACT Act) in an attempt to reduce the risk of consumer fraud and related crimes, including identity theft, and to assist any victims. In general, the FACT Act amends the Fair Credit Reporting Act to enhance the accuracy of consumer reports and to allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. Section 216 of the FACT Act requires the Federal Trade Commission (FTC), in coordination with the Federal Banking Agencies, the National Credit Union Administration (NCUA), and the Securities and Exchange Commission (SEC), to issue regulations requiring "any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation." The stated purpose of this Section is to prevent unauthorized disclosure of consumer information and to reduce the risk of fraud or related crimes, including identity theft, by ensuring that records containing sensitive financial or personal information are appropriately redacted or destroyed before being discarded. In addition to adopting regulations that are consistent and comparable, the Agencies' regulations must be consistent with the Gramm-Leach-Bliley Act (GLBA) and other provisions of Federal Law.

The National Independent Automobile Dealers Association (NIADA) has represented independent motor vehicle dealers for over 50 years. The National Association and its State Affiliate Associations represent more than 19,000 independent motor vehicle dealers located across the United States. In 2003, a record 43.6 million used motor vehicles were retailed generating more than \$366 billion in revenues. Because vehicles are lasting longer (the average vehicle on the road today is over 8.5 years old), projections of future used vehicle sale volumes suggest that the used vehicle market will maintain its 40-million-plus volume in the years to come.¹ Given the number of motor vehicle transactions that take place each year, the FACT Act Disposal Rule will have a significant impact on the used retail motor vehicle industry, and therefore hereby submits the following comments with respect to the Rule.

SECTION B. COMMENTS ON THE PROPOSED FACT ACT RULE.

1. Proposed Sections 682.1(b): Definitions and 682.2: Purpose and Scope.

Pursuant to Footnote 1 in the Notice of Proposed Rulemaking, the Federal Banking Agencies, NCUA, and SEC are proposing to implement Section 216 of the FACT Act by amending their existing guidelines and rules on information security previously issued to implement Section 501 of the GLBA. However, because the entities subject to the FTC's jurisdiction under the FACT Act and the GLBA are overlapping, but not coextensive, the FTC is proposing a separate Rule

¹ The 2004 Used Car Market Report, Manheim Auctions, 1400 Lake Hearn Drive, NE, Atlanta, GA 30319-1464.

to implement Section 216. In addition, the FTC recognized at Footnote 6 that coverage of the Proposed Rule is intended to be different from that of the Safeguards Rule. NIADA is concerned that the definition of “consumer information” as proposed by the FTC is overly broad and may extend to information beyond the scope of consumer information intended to be covered by the Disposal Rules.

Under Section 682.1(b) of the Proposed Rule, “consumer information” is defined as, “any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report.” Section 682.2(b), which sets forth the scope of the Proposed Disposal Rule, provides that it applies to “any person over which the Federal Trade Commission has jurisdiction, that for business purposes, maintains or otherwise possesses consumer information, or any compilation of consumer information.” The FTC indicated that it believes the phrase “derived from consumer reports” covers “all of the information about a consumer that is taken from a consumer report...”. The definition of “consumer information” for purposes of both of these Sections should be consistent with the definition of “customer information” as defined in the FTC’s Final Privacy and Safeguards Rules in that information that is contained in a consumer report, but which is available in other public records, should not be covered under the Disposal Rule.

In the FTC’s Final Privacy and Safeguards Rules, “customer information” refers to those records and/or information related to the “nonpublic personal information” obtained by a financial institution. In order to be consistent, the FTC should clarify that “consumer information” for purposes of the Disposal Rule only refers to “any record that is a consumer report or that is derived from a consumer report using any personally identifiable consumer information that is not publicly available.”² Retail sellers of goods may have records concerning customers that contain information that may be derived from a consumer report, but is also obtainable from other sources. For example, motor vehicle titles are public records. They contain the name and address of the owner of a vehicle and the name of the lienholder, if applicable. NIADA proposes that the FTC modify the definition of “consumer information” in the Disposal Rule to more closely parallel the definition of customer information in the FTC’s Final Privacy and Safeguards Rules and provide specific examples of the types of records about an individual that are deemed to be “derived from a consumer report.”

2. Proposed Section 682.3: Proper Disposal of Consumer Information.

The Proposed Rule would require that any person that maintains or otherwise possesses consumer information “take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.” Recognizing that there are few “fool proof” methods of record destruction, the FTC’s proposed Rule does not require covered entities to ensure perfect destruction of consumer information; rather, it requires them to take reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal. NIADA supports the standard proposed by the FTC for the proper disposal of consumer information in that it is flexible enough to allow covered entities to make decisions taking into consideration their size, the sensitivity of the consumer information collected, the nature and size of their operations, and the costs and benefits of different disposal methods. The flexibility of the Proposed Rule, together with the examples providing guidance

² FTC Final Privacy Rule Section 313.3(n)(1)(i) and (ii).

on disposal measures that would be deemed reasonable under the Rule, should minimize the disruption of the existing practices of entities that have implemented policies and procedures to comply with the FTC's Safeguards Rule and other measures to protect consumer information.

3. Proposed Section 682.5: Effective Date.

NIADA does not believe that making the Disposal Rule effective 3 months after the publication of the Final Rule is an adequate amount of time to advise covered entities of their new obligations and implement appropriate policies and procedures. While many of the same policies and procedures will apply with respect to the disposal of information under the Disposal Rule as disposal of customer information under the Safeguards Rule, not all of the same entities or information are covered under the two Rules. Even those entities that are covered under the Safeguards Rule will need sufficient time to ensure that they have identified the appropriate records containing consumer information subject to the Disposal Rule; to establish appropriate policies and procedures governing disposal of the records, as well as conduct appropriate employee training; to enter into written contracts with any third parties with access to the consumer information and/or that are engaged in the business of record destruction to dispose of consumer information; and take such other measures as they deem appropriate to ensure that third parties will dispose of the information in a manner consistent with the Disposal Rule. NIADA proposes that an effective date 1 year from the date on which a Final Rule is issued is adequate time for covered entities to comply.

C. CONCLUSION

NIADA agrees with and supports the FTC's decision to provide entities covered by the Proposed Disposal Rule flexibility to make decisions taking into consideration their size, the sensitivity of the consumer information collected, the nature and size of their operations, and the costs and benefits of different disposal methods. The flexibility of the Proposed Rule, together with the examples providing guidance on disposal measures that would be deemed reasonable under the Rule, should minimize the disruption of the existing practices of entities that have implemented policies and procedures to comply with the FTC's Safeguards Rule and other measures to protect consumer information, as well as help to minimize the potential costs and burdens that may be incurred by covered entities. NIADA believes that most motor vehicle dealerships already have developed effective policies and procedures in order to comply with the Disposal Rule requirements. However, NIADA proposes that the FTC modify the definition of "consumer information" to clarify that information that is contained in a consumer report, but which is available in other public records, is not covered under the Disposal Rule and that the FTC provide specific examples of the types of records about an individual that are deemed to be "derived from a consumer report." NIADA further requests that the FTC extend the effective date of the Final Rule from 3 months to 1 year after the publication of the Final Rule to permit covered entities to implement appropriate policies and procedures.

NIADA would like to thank the FTC for the opportunity to comment with respect to the proposed Safeguards Rule. Any questions the FTC has regarding NIADA's comments and the position taken herein may be directed to NIADA's Legal Counsel, Keith E. Whann or Deanna L. Stockamp, of the law firm Whann & Associates located at 6300 Frantz Road, Dublin, Ohio 43017.