



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
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Legal & Regulatory Group

June 15, 2004

Via E-Mail

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

Re: The FACT Act Disposal Rule, R-411007

Dear Sir/Madam:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) Notice of Proposed Rulemaking (“NPR”) requesting comment on the regulations it should implement under Section 216 of the Fair and Accurate Credit Transactions Act (“FACT Act”) regarding the disposal of consumer report information and records (“Disposal Rule”). 69 Fed. Reg. 21,388 (April 20, 2004).

NADA represents approximately 20,000 franchised automobile and truck dealers who sell new and used vehicles and engage in service, repair and parts sales. Our members employ more than 1.1 million people nationwide. A significant number of our members are small businesses as defined by the Small Business Administration.

We commend Congress and the Commission for their efforts to reduce the risk of consumer fraud and related harms created by improper disposal of consumer information. The Commission appropriately proposes a flexible “reasonable measures” standard of disposal to coincide with the Commission’s Safeguards Rule, which a vast majority of our members are currently subject to. Although the proposed Disposal Rule and the Safeguards Rule apply to different sets of information, due to the fact that “consumer information” is defined differently than “customer information,” the proposed illustrative examples provide helpful guidance on the “reasonable measures” standard. In addition, to the extent that “consumer information” is a subject of “customer information”, the FTC should deem adequate disposal procedures under the Safeguards Rule as constituting compliance with the Disposal Rule.

There is one area of concern that we believe the Commission should address. Among the 20,000 dealers we represent, approximately 18,500 dealers sell cars and light-duty trucks, while 1,500

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members sell medium and/or heavy-duty trucks. Most medium and heavy duty truck dealers are not subject to the Safeguards Rule, but do obtain consumer reports pursuant to the financing process. Those entities will have to create and develop a “reasonable measures” standard of disposal from scratch. For entities subject to the Disposal Rule, but not the Safeguards Rule, we ask that the FTC provide non-exclusive examples of reasonable policies and procedures governing disposal.

Additionally, the Commission should extend the proposed three month effective date contained in proposed section 682.5 to at least 9 months after the final rule is issued. It took a substantial amount of time to educate financial institutions about the Safeguards Rule and to develop and create comprehensive written information security programs to comply with the rule. We feel the additional burden anticipated by the proposed Disposal Rule to those not currently subject to the Safeguards Rule compels an implementation period longer than the three-month period in the proposed rule.

NADA appreciates the opportunity to comment on this matter.

Sincerely,

Smitha Koppuzha
Staff Attorney