

March 6, 2013

Federal Trade Commission
Office of the Secretary
Room H-113 (Annex T)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Regulatory Review of the Used Motor Vehicle Trade Regulation Rule, Project No. P087604

Dear Secretary Clark:

The National Salvage Vehicle Reporting Program (NSVRP), a leading not-for-profit law enforcement support organization dedicated to reducing auto theft, title fraud and abuse, appreciates the opportunity to comment on the Notice of Proposed Rulemaking cited above and thanks the FTC for extending the comment deadline.

NSVRP works closely with the U.S. Department of Justice (DOJ), the FBI, U.S. Customs and Border Protection and other parties to help further our mutual objectives. In addition, NSVRP is recognized by the Department of Justice as an independent third party standards body for the National Motor Vehicle Title Information System (NMVTIS), which was created as a result of the Anti-Car Theft Acts of 1992 and 1996. NSVRP's board is comprised of representatives of local and national law enforcement organizations.

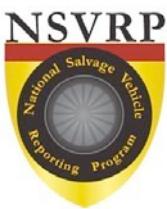
In fulfilling our mission of reducing auto theft, title fraud and abuse, NSVRP routinely monitors the sale of used and salvage vehicles, tracking vehicles that are erroneously and sometimes illegally offered for sale with unbranded or 'clean' titles, vehicles whose titles are 'skipped' when sellers avoid reporting requirements illegally or through state and federal loopholes and vehicles whose titles are 'washed' using interstate transfers. In many cases, NSVRP is able to track these potentially unsafe and fraudulently or improperly branded cars from insurers and other parties through the salvage auctions and middlemen as they ultimately pass into the hands of unsuspecting consumers.

For all of these reasons, we believe NSVRP is uniquely situated to provide new evidence that has not been considered in previous Used Car Rule reviews. As we will illustrate, segments of the vehicle disposal chain can take advantage of various limitations in federal regulations and inconsistencies in branding and titling that exist between states to offer total loss vehicles with clean titles for sale at auto salvage auctions. When unethical resellers buy these vehicles and then offer them for resale to the public as clean-title, prime used cars they place unsuspecting consumers' finances, health and safety at risk.

NSVRP strongly urges the FTC to consider strengthening the Used Car Rule to mitigate this risk by:

- Requiring sellers to disclose known prior history information about the cars they sell;
- Requiring sellers to check each vehicle's history with a history report that incorporates NMVTIS data and include a warning sticker on the vehicle if the NMVTIS vehicle history data indicates that:
 - the vehicle is or has been reported as a total loss by an insurance company;
 - the vehicle has been reported as acquired by a NMVTIS junk/salvage reporting entity; or
 - the certificate of title contains a brand.
- Requiring inclusion in the final sale paperwork, to be signed and dated by the seller and the buyer, a notation of whether a warning sticker was or was not included and the effective date on which the NMVTIS data was accessed.

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We believe these recommendations will protect consumers from the types of consumer fraud which NSVRP's research reveals is occurring on a significant basis, provide defrauded consumers with adequate avenues for recourse depending upon which entity or entities acted illegally, and protect responsible resellers while not unduly burdening dealers and providing a clear and uncomplicated path for enforcement by the FTC.

In the following pages we will provide detailed explanation of how these abuses occur and why a stronger Rule is needed. However, as many of the examples of fraud we have identified originate at salvage auto auctions, we would like to provide some background information for those who may not be familiar with the expanded operations and offerings of today's salvage pools.

The size of the salvage pool market is quite large. Salvage auctions handle roughly 3.5 million vehicles each year, which is significant in relation to the total used car market of approximately 30-40 million used car sales annually. The vehicles handled by the salvage pools are no longer only massively damaged wrecks that go to junkyards and shredders. In recent annual reports, the major public salvage pool corporations indicated that the share of non-insurance sourced vehicles at their facilities was about 20 percent of their total vehicle sourcing, and this percentage has been rising for years as a conscious business objective. As an example, Copart, which is the largest salvage pool entity in the U.S, noted that it presently purchases more used cars from the public for resale than any other dealer in the state of NJ. This statement was made before Hurricane Sandy, and NSVRP research confirms that the large number of vehicles damaged in Hurricane Sandy has led to dramatic increases in the volumes of non-insurance sourced cars by the salvage pools on both an absolute and a percentage basis.

As a result, an ever-increasing portion of vehicles at the salvage pool auctions is being resold for reuse on the road. As you will see below, many of these vehicles are improperly unbranded or unreported vehicles that create special risks for the driving public when sold with undocumented histories and undisclosed damage.

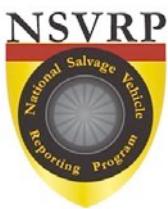
Improper titling, branding and structural corruption in the process of the sale of used and salvage cars is always a problem, but it becomes most visible when natural disasters strike, such as what we are seeing in the used and salvage vehicle markets in the aftermath of Hurricane Sandy. NSVRP has monitored approximately 80,000 water flood vehicles already sold and has captured records of thousands more listed in the inventories of the auctions but not yet posted for sale. There may be 500,000 or more Sandy flood loss vehicles of all kinds, with roughly half not covered by insurance. Our research results indicate that significant numbers of monitored flood-damaged vehicles sold at salvage auto auctions are being offered for sale with clean titles. Many of these flood and water-damaged automobiles are sold at auction with water damage or 'FLOOD' listed in the auction notes but the loss or sale has not been reported on the official title paperwork or in mandated databases, and so they are being sold with clean, unbranded titles.

The National Highway Traffic Safety Administration (NHTSA) also recognizes this problem and has issued a warning to the top insurance companies that such title skipping activity is a violation of the Federal Odometer Act. Those letters were sent to the insurers on December 20, 2012, and were publicly posted by NHTSA on February 7, 2013.

In addition to outright title skipping, many other kinds of violations have been observed by NSVRP and by other agencies. These violations include failure to report vehicles into NMVTIS as required by law, failure to apply for new titles, failure to apply for properly branded titles, and selling vehicles without proper transfers recorded when required by law.

NSVRP is therefore submitting these comments to illustrate how abuses taking place in the sale of used and salvage vehicles – including major corporations integral to the total-loss and salvage disposal process violating

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state and federal branding and disclosure laws – result in unbranded flood damaged vehicles reentering the used car marketplace for resale to consumers who could only know the vehicles’ true histories through required disclosure of known vehicle history by the seller.

In the following pages, NSVRP will provide two examples from the thousands we have uncovered. While the requested 60-day or longer comment submission extension would have enabled NSVRP to complete a greater portion of our research, we still have been able to provide a substantial and thorough analysis and recommendations in response the FTC request for comments. We have thousands of pages of documentation and information on roughly 100,000 flood loss vehicles backing up this analysis.

Example One

As you can see from the auction listing below, this 2006 Toyota Camry was offered for sale online through a Central New Jersey Insurance Auto Auctions (IAA) site with a clear New York State title and “FLOOD” listed as the primary reason for the loss.

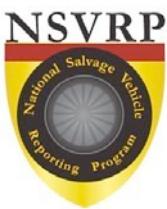
NY requires that all total loss cars, including flood cars, must have their titles surrendered to the state and be issued an NY MV-907a salvage certificate in place of the surrendered title. Once repaired, the vehicle can be presented for re-inspection and a new title may be issued after the vehicle has been re-inspected. The new title will typically note that the vehicle is designated as a rebuilt salvage vehicle.

Many New York State-registered vehicles were acquired as total loss salvage when insurance companies paid off claims on Hurricane Sandy flood losses. Each of these paid-off total-loss vehicles is required to have its original title turned in to NY State to be retired and to be issued an MV-907a salvage certificate. In many cases, including the first example that follows below, insurers do not apply for salvage certificates and avoid re-titling altogether by selling the vehicle at auction and providing the title with the odometer disclosure statement as signed by the insured to the auction buyer with the remaining required information still blank, thereby engaging in title skipping as described in the previously mentioned NHTSA warning letter.

In the case of this specific 2006 Camry example, this ‘top 10’ insurance company failed to obtain the proper NY State salvage certificate and then engaged in title skipping by paying off the claim and leaving the vehicle improperly retaining an original clean title still in the name of the insured rather than turning in the title to get a salvage certificate in the name of the insurance company. The insurance company then worked with the salvage auction that disposes of vehicles for it to transport the Camry over state lines to a New Jersey insurance salvage auction location and offered it for sale under the original pre-Hurricane Sandy clean title still issued in the name of the insured. This auction company, IAA, is one of nation’s two largest salvage pool organizations, with more than 150 domestic facilities including several facilities within NY State. IAA regularly sells salvage vehicles in New York State with MV-907a salvage certificates and therefore would be fully aware of the MV-907a requirement for this vehicle since the auction prominently displayed that this was a flood damaged vehicle.

The insurance company was legally required by NHTSA to comply with the Federal Odometer Act when it paid off the claim by having the complete odometer statement filled out by the insured at the time the vehicle was transferred to the insurance company. This is a federal requirement in addition to the state requirement to submit the title to NY State to acquire an MV-907a salvage certificate for this vehicle, and at the same time to notify NY State to record the transfer from the insured to the insurance company. It is part of any insurance company’s business to be aware of the Federal Odometer Act requirement to transfer the title from the name of the insured to the name of the insurer, yet in this and in many other cases the insurer either did not instruct the

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insured to comply with the Odometer Act requirements or even instructed the insured to unknowingly violate federal law by leaving a blank clean title devoid of the required transfer information. This failure to properly instruct created a situation enabling the insurer to then resell the vehicle through an auction in a way that the auction and insurer would be able to convey a pre-flood clean title to the next buyer that would not show that a insurance company had paid off an insurance claim and had taken possession of the vehicle.

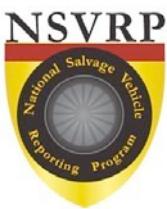
As we have already noted, in addition to their obligations to record the transfer on the back of title to document the Odometer Act transfer, the insurer also failed to apply for a salvage certificate under state law. While the MV-907a process is specific to NY, we found similar repetitive violations taking place with title skipping in other states, involving both of the major publicly traded salvage pool corporations and multiple insurance companies. When the vehicle was resold at auction, the odometer declaration not executed in compliance with the law.

Although in this case the insurer was not required to report into NMVTIS as a result of a limitation in the federal law requiring insurers to only report vehicles between 0 and 4 years of age, the Department of Justice had requested that insurers voluntarily report all Hurricane Sandy flood cars in addition to those they were mandated to report. Nothing in the NMVTIS rule prohibits the insurers from reporting those other flood loss vehicles, and doing so is in the public interest. As far as we can tell none of the major insurers has agreed to comply with this request. While in this case that insurer was not in violation of NMVTIS reporting, NSVRP has identified other vehicles from this same insurer that were total loss flood claim vehicles and which did fall under the 0 to 4 year mandated reporting requirement, yet which also were not reported to NMVTIS – in direct violation of the law. Fortunately, no such exemption applies to the reporting on these same vehicles when they are resold of on behalf of insurers by other parties such as salvage pools. Therefore, notwithstanding the insurance year model reporting exemption in the 1996 Anti-Car Theft Improvements Act, these vehicles are all still subject to NMVTIS reporting when they are sold on behalf of an insurer regardless of the age of the vehicle.

When IAA took possession of this car for sale on behalf of the insurer, it was obligated to report its acquisition to NMVTIS as a junk/salvage reporting entity. However, IAA did not report the vehicle into NMVTIS as required under law, and NSVRP has identified many instances in which both of the major salvage pool auction companies avoided reporting Hurricane Sandy-damaged vehicles although they were required to do so. In addition, while DOJ has requested that the pools report into NMVTIS as quickly as possible, based upon NSVRP's extensive sampling, IAA – in those cases when it does comply and report under the law – appears to be consistently delaying its reporting as long as allowed under the law. Engineering this built-in delay into their computer processes would require additional programming as compared to having the reporting take place as soon as the records have been entered into their online inventory systems and allows time for additional transactions to take place before the branded title ‘catches up’ with the vehicle. The other major salvage auction company historically has been reporting immediately, but recently seems to have also begun reporting on a delayed basis.

Potential purchasers of these flood-damaged, clean title vehicles at salvage pool auctions are looking at photographs and in many cases auction notes and comments indicating the approximate nature of damage. Using this information, buyers understand that the vehicle in question is a flood vehicle, and also is a vehicle with a clean title in spite of the flood damage. This enables them to bid on the vehicle knowing that once they acquire the vehicle they will be able to resell it with there being no easy way for a consumer to be aware of the prior condition of the vehicle. This allows a bidder who may engage in unethical business practices to raise its bids knowing it will be in a position to represent the vehicle as a choice quality vehicle when it is offered for sale to the public, assured that there is little chance of exposure given the clean title history.

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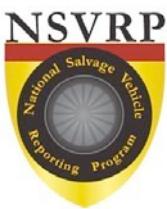
NSVRP regularly monitors online auctions and notes many very substantially damaged salvage vehicles being purchased at prices that are only sustainable if the purchased units at auction are intended for resale as used cars by the purchaser rather than for parts or scrap. In addition to the numerous Hurricane Sandy-damaged cars, examples abound of particularly obvious cases of fully burnt cars with clean titles being purchased for many thousands of dollars, some of which NSVRP has later tracked to stolen vehicles that were retitled under the purchased VIN. In other cases NSVRP has identified title skipped insurance total-loss vehicles that retained clean titles and then were resold with undisclosed damage to private citizens over state lines. A significant new and alarming trend consists of large volumes of inaccurately clean-title cars being bought for export as part of trade based money laundering schemes (TBML). According to the founder of Copart, the fraction of cars being bought from the Copart pools by international buyers is now roughly 25 percent of total sales. In December 2011 the US indicted 30 dealers under the USA Patriot Act for purchasing used and salvage vehicles on behalf of Hezbollah and allegedly shipping them to Benin for resale with the funds deposited in accounts at the Lebanese Canadian Bank and transferred into Hezbollah controlled accounts. The amount of money involved is substantial and was noted in the indictments to have been as much as \$200 million dollars a month.

All of these factors can lead to enhanced bidding on improperly unbranded clean title cars, thus providing increased returns for the insurance companies or any other sellers, and may be a strong motivation to bend or break the rules. Auctions also directly benefit when vehicles sell for a higher value since the auction gets a fee from the buyer that is based upon the auction price paid. Higher auction results can also help generate new salvage supply contracts for salvage auction corporations as insurers seek to improve their returns on salvage.

In the case of this 2006 Camry, the transaction was not reported into NMVTIS by either the insurance company or by the salvage pool. The transaction did not show up in the National Insurance Crime Bureau NICB VINCheck consumer public portal even though it was a Hurricane Sandy insurance total-loss flood car, and one from an insurer that was listed as participating in the VINCheck program. As a result of the efforts taken to avoid branding, transfers and reporting, as recently as 2/13/2013 the vehicle flood loss status also did not show up in CARFAX where the vehicle was described as a ‘guaranteed no accident or junk’ condition. This is not the fault of CARFAX, but rather the fault of the parties who failed to meet their state and federal legal obligations to properly title and report.

Unlike the situation with this vehicle not being picked up by commercial car history reports, the non-disclosure in NICB’s VINCheck is more problematical. NICB had previously disclosed that it had received from its member insurance companies roughly 230,000 Hurricane Sandy vehicle claims. They also noted a very extensive list of insurers who submitted insurance claim data for their VINCheck public disclosure database. NSVRP has done extensive sampling of VINCheck reporting on insurance total-loss Hurricane Sandy flood vehicles that have passed through the major salvage auction chains and has found a low reporting rate on these vehicles by VINCheck in our random sampling. We have also been able to confirm that many of these are from insurance companies which are listed as cooperating with the NICB VINCheck program. Apparently these two databases are not being cross checked by NICB, and either many insurers who are reporting their claims to NICB for their internal industry database are not reporting the vehicles to NICB for VINCheck regardless of any assertion by NICB that they are fully reporting, or else there is some other reason for the disconnect between the databases. One would expect that as part of maintaining this type of database there would be initial validity checking and auditing protocols in place to confirm the integrity of the process. The result is that VINCheck is not presently providing the claimed level of protection to the public. A simple cross check of record counts by NICB of claims reported by insurance company between NICB’s VINCheck database and the regular NICB/ISO insurance claims database would validate the extent of such shortfall in reporting. A direct VIN match between the databases would determine which specific vehicles are not being

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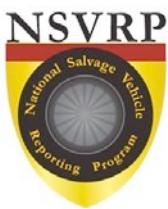


included in the VINCheck public disclosure database. We have brought this to the attention of NICB and are hoping they will be able to validate and correct the situation.

A used car dealer or rebuilder who acquires this 2006 Camry would be fully aware of the prior flood history and yet at the same time offer this vehicle for resale with a high degree of comfort that the deception is not discoverable through normal means. In the case of Hurricane Sandy, many of the vehicles are being sold for export where the buyers being defrauded will be out of the country. Still other vehicles are being properly disposed of when they are bought for dismantling for parts and scrap. Unfortunately, many thousands more are processed through the system in ways that violate the law and end up being resold to the public in ways that are fraudulent and may compromise consumers' finances, health and safety.

These then are some of the challenges that a consumer faces when purchasing used vehicles which have been previously damaged, flooded or wrecked and which are moved through a system from the time of a loss until they are purchased by entities that can misrepresent and defraud consumers partly by taking advantage of abuses in the supply chain.

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IAA Listing for 2006 Camry

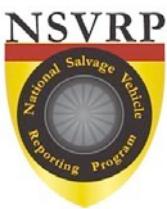
Insurance Auto Auctions		
2006 TOYOTA CAMRY		
000-10608791 11/2/2012 COPYRIGHT 2012 - INSURANCE AUTO AUCTIONS		
Auction Central New Jersey		
Wednesday Dec-5 8:00 AM CST		
Status :	READY FOR SALE	
Location :	Central New Jersey Branch	
Lane A	Item#:	3010
Who Can Bid :	Dealer, Dismantler, Exporter, Other Licensed Business, Rebuilder, Scraper	
ACV :	\$7,250	
Data Last updated :	Dec 4 1:33 AM CST	
Stock#: 10608791 Sale Document: CLEAR(New York)		
Loss:	OTHER	
Primary:	FLOOD	
Secondary:		
Key:	Present	
Start Code:	WONT START	
Odometer:	12900	
Odometer Status:	ACTUAL	
Fuel Type:	Gasoline	
Cylinders:	4 Cyl	
Engine:	2.4L L4 FI DOHC 16V NF	
Transmission:	Unknown	
Drive Line Type:	Front Wheel Drive	
Vehicle:	Automobile	
VIN:	4T1BE3K06UJ690193	
VIN Status:	OK	
Body Style:	SEDAN 4 DOOR	
Vehicle Class:	Upper Midsize (car)	
Series:	LE/XLE/SE	
Manufactured in:	UNITED STATES	
Exterior Color:	SILVER	
Interior Color:	GRAY	
Restraint System:	Dual Front Air Bags/active Belts	
Air Bags:	2	
Driver/Passenger:	INTACT / INTACT	
Features		
CD Player:	PRESENT	
Radio:	PRESENT	
Tape Deck:	N/A	

Posted Auction Listing for IAA Central NJ Dec 5, 2012 Auction

The FTC should note that, as in the auction listing above, the typical auction listing for Hurricane Sandy cars often does identify to the bidder that the vehicle is a flood car at the time of the auction, proving that both the potential buyers and the auction companies are aware of the flood status of these vehicles. The auction listing also typically indicates to bidders which cars are being offered with clean titles.

NSVRP has identified many cars with clean titles despite flood-damage notes and has found that many of these documented Hurricane Sandy flood cars which were noted as water/flood cars in the auctions' descriptive paperwork are not showing as salvage or total loss vehicles in NICB VinCheck, NMVTIS, CARFAX or other sources, as is the case with this 2006 Camry. We have also found that the auctions themselves seem to be purging their public access to their online auction listings once the auctions have ended. This makes it nearly impossible for a consumer to recognize when they have bought a flood-damaged vehicle.

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2006 Camry Vehicle History Reports



National Vehicle History / Title Pointer
Retrieved On: Fri December 28, 2012 09:38:35 AM EST

Vehicle Information			
VIN: 4T1BE32K06U690193	Year: 2006	Make: Toyota	Model: Camry
Vehicle Brands			
No brand information found in NMVTIS			
Title Information			
Title: New York 12/16/2005 000000008 Miles			
Junk/Salvage/Insurance Reporting			
No Junk/Salvage Reports			
No Insurance Reports			

Note that the NMVTIS database confirms that the salvage auction failed to report this flood total-loss vehicle even though required to do so by law.



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Home > Theft and Fraud Awareness > VINCheck

VINCheckSM

Results for VIN: 4T1BE32K06U690193

Print this Page

VINCheck™ Theft Record	4T1BE32K06U690193 has not been identified as a vehicle listed in the VINCheck™ Theft Records. VINCheck™ is updated regularly as additional information is reported.
VINCheck™ Total Loss Record	4T1BE32K06U690193 has not been identified as a vehicle listed in the VINCheck™ Total Loss Records. VINCheck™ is updated regularly as additional information is reported.

Note that in spite of this being a total-loss flood vehicle from a major insurer that was reported into ISO/NICB this vehicle still shows as a clean vehicle in the NICB VINCheck report.

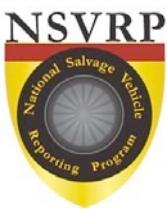
Improper and in some cases illegal actions involved in offering this flood-damaged vehicle for sale with an improperly clean title without any official prior damage disclosure include:

- The major insurer who paid the total loss claim to the vehicle's original owner did not have a New York State MV-907a salvage certificate issued for the vehicle, as required by state law.
- At the time of the sale, the insurance company apparently omitted itself from the chain of title by avoiding making certain disclosures, therefore violating the Federal Odometer Act.
- Due to a limitation in the statute that only requires insurers to report into NMVTIS if a vehicle is 0 to 4 years old, avoidance of NMVTIS reporting is not a violation by the insurer in this case. NSVRP has however noted improper avoidance of reporting by this same insurer and by other insurers on other vehicles where there was an obligation for NMVTIS reporting. (This year-model reporting exemption only exists for insurer reporting.)
- The auto auction neglected to report to NMVTIS what was clearly a total loss vehicle.
- The Camry does not show up in any vehicle history reports as having prior damage and it is unlikely that it ever will because the car was sold with an unbranded title and the damage was never reported.

With some effort to get this 2006 Camry into working condition, it can reenter the used car marketplace to be purchased by an unsuspecting buyer whose only way of knowing that it was a flood-damaged total loss vehicle would be disclosure of known prior history by the seller.

Under the FTC's Proposed New Rule, known prior damage is not required to be disclosed in future sales even in cases where the seller has direct knowledge of prior damage or loss history information. This would seem to absolve enterprises clearly intending to defraud consumers from any obligation to report known vehicle damage.

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Example Two

The following example tracks a documented Hurricane Sandy flood damaged vehicle offered for sale in an online New Jersey IAA auction on Nov. 29, 2012. While the original listing has been purged from the salvage auction website, the summary information collected and housed by NSVRP during our monitoring clearly shows that this 2012 Nissan Sentra was offered for sale with a clear, unbranded title despite the notation of flood damage.

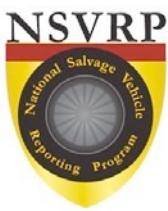
In this example, the original owner was a national rental car fleet operator. The vehicle was a NY titled car, and was required to have its original title surrendered and to be issued an MV-907a salvage certificate for resale. In addition, the rental fleet owner was obligated to report the total-loss flood into NMVTIS and did not do so. The vehicle was transferred from NY to NJ and offered for sale at a NJ location of the auction company under improper NY clean title paperwork. The auction was also obligated to report the vehicle into NMVTIS to acknowledge that they acquired control of it for the purpose of offering it for resale and they did not. NSVRP has identified approximately 50 other total-loss flood loss vehicles from this same rental car company which were also resold under clean titles and which were not reported into NMVTIS either by the rental car company or by the salvage auction company even though both were required to report into NMVTIS.

In this case the buyer that purchased the vehicle for resale was based in Miami, Florida. As you can see from the buyer's Craigslist posting, the vehicle looks to be a prime vehicle being offered for sale for about \$12,000. The vehicle is also listed through a second website ironically named Lemonfree.com. Flood cars often do not have physical impact damage, and so can be cleaned and buffed to appear to be in great shape when they in fact are unreliable and subject to continual failure problems. This tendency of flood damaged vehicles to pose chronic problems was noted in a Hurricane Sandy-related advisory posted by the U.S. Department of Justice on the DOJ NMVTIS website.

The organization looking to resell this total loss, clean title Sentra to an unsuspecting consumer at near retail book value is no small-time, inexperienced group. The business posting the Craigslist ad – BestCarPriceUSA.com – leads to more than a dozen other businesses and multiple parties, a number with criminal records for automotive-related crimes, as detailed in the graphic representation of interconnected businesses and parties below. Clearly this is all set up in a way that is designed to defraud an unsuspecting consumer.

A review of the vehicle history reports reveals that if the seller does not disclose known prior damage, potential buyers are not likely to find out. A CARFAX vehicle history lists no accidents or damage reported, although if the consumer reads through to the third page he or she will find that the vehicle was sold at "Auto Auction Eastern Region." CARFAX did note the vehicle as a commercial vehicle which NSVRP has identified as actually a vehicle from a rental car fleet. The notation of a current model year commercial vehicle in apparently undamaged condition having been previously sold through an auto auction may make an informed consumer somewhat suspicious, however many commercial vehicles are sold through regular used car auctions and therefore that information alone is not enough to ensure the potential buyer makes the right call and recognizes this as a Hurricane Sandy flood car without also being aware of actual salvage auction flood listing on this clean title car. The NICB report also shows no prior damage history which would further mislead any potential buyer even though in this car NICB would not have gotten a report since this was likely a self-insured fleet vehicle and not one with an insurance claim filed with an NICB member company on this vehicle.

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Insurance Auto Auctions Summary Report 11/29/2012

Insurance Auto Auctions: Branch Listing: Auction Times and Locations: Auctions

Page 14 of 82

	WATCH	OFF SITE	10606779	A	48	2012	MAZDA	3	1 (INOPERABLE DIGITAL DASH)	<u>JM1BL1L8XC1855563</u>	FLOOD	CLEAR-NJ	\$25.00
	WATCH	OFF SITE	10606780	A	47	2012	HONDA	CIVIC	1 (INOPERABLE DIGITAL DASH)	<u>2HGFB2F50CH570293</u>	FLOOD	CLEAR-NJ	\$3,050.00
	WATCH	OFF SITE	10606781	A	49	2012	NISSAN	SENTRA	1 (INOPERABLE DIGITAL DASH)	<u>3N1AB6APXCL691626</u>	FLOOD	CLEAR-NJ	\$1,700.00
	WATCH	OFF SITE	10616312	A	43	2011	HONDA	INSIGHT	1 (ACTUAL)	<u>JHMZE2H54BS010637</u>	FLOOD	ALL OVER	CLEAR-NJ \$2,225.00
	WATCH	OFF SITE	10616315	A	44	2012	NISSAN	SENTRA	1 (ACTUAL)	<u>3N1AB6AP9CL724387</u>	FLOOD	ALL OVER	CLEAR-NJ \$1,300.00
	WATCH	OFF SITE	10616317	A	45	2012	MAZDA	3	1 (ACTUAL)	<u>JM1BL1L85C1855745</u>	FLOOD	ALL OVER	CLEAR-NJ \$2,100.00

This is the original salvage auction listing for this flood vehicle which was available online for inspection on the IAA website up to the end of the auction.

<https://www.iaai.com/Auctions/BranchListingView.aspx?branchCode=607>

IAA Auction Summary Listing 11/29/2012 Avenel NJ Auction Date

11/29/2012

Insurance Auto Auctions: Search: Vehicles

Page 1 of 1

Insurance Auto Auctions

[Vehicles > Keyword Search - 3N1AB6AP9CL724387](#)

QuickLinks

Select Category

Note that this same VIN no longer shows as a known VIN in the IAA history look-up. The lookup was purged shortly after the auction took place and could not be found online by NSVRP as of the next day.

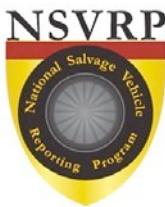
No matches have been found for 3N1AB6AP9CL724387

Here are some search suggestions that can help you find better results.

- Check the spelling.
- Try a similar keyword, make or model.
- Try to modify your search by adding or removing spaces between the keywords.
- Try searching with an alternate Stock or VIN number.

This VIN no longer exists in the IAA Website History Lookup (last checked on 2/17/2013)

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2012 Nissan Sentra Vehicle History Report Snapshots



Home > Theft and Fraud Awareness > VINCheck

VINCheckSM

Results for VIN: 3N1AB6AP9CL724387

VINCheck™ Theft Record	<p>3N1AB6AP9CL724387 has not been identified as a vehicle listed in the VINCheck™ Theft Records.</p> <p>VINCheck™ is updated regularly as additional information is reported.</p>
VINCheck™ Total Loss Record	<p>3N1AB6AP9CL724387 has not been identified as a vehicle listed in the VINCheck™ Total Loss Records.</p> <p>VINCheck™ is updated regularly as additional information is reported.</p>

CARFAX® Vehicle History Report™	
An independent company established in 1986	
Vehicle Information:	
2012 NISSAN SENTRA S/SR/SL	VIN: 3N1A866AP9CL724387 SEDAN 4 DR
2.0L I4 FI DOHC 16V	FRONT WHEEL DRIVE
Standard Equipment Safety Options	
 No accident / damage reported to CARFAX	
 CARFAX 1-Owner vehicle	
 Commercial vehicle	
 Last owned in New York	
 32 Last reported odometer reading	
 \$330 Below retail book value	

Craigslist Posting of Flood-Damaged Nissan Sentra

2012 NISSAN SENTRA BLUE Page 1 of 1

[Reply to me below](#) [flag](#) [misclassified, prohibited spam, beat up](#) Page 223-3-0313, 13 COMM RPT

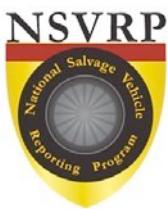


Here is this same vehicle now relisted on Craigslist as a quality used car. The vehicle was also listed by the same entity on 'LemonFree.com' and the phone number listed on both web portals as the same cell phone number. The sellers are multiple business entities in Miami Florida and include some individuals with prior criminal records for auto fraud, title fraud, VIN alterations and other auto related crimes.

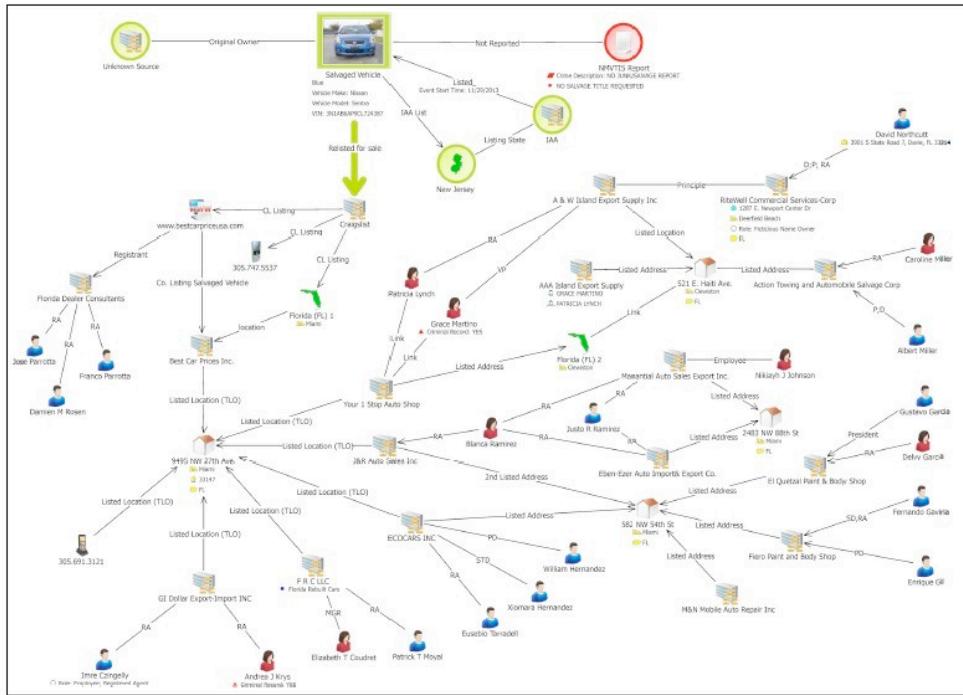
Journal of Oral Rehabilitation 2003; 30: 113–119

2/13/2013

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Graphic Representation of Interconnected Businesses and Parties



Interconnected Related Parties Offering this Flood Loss Vehicle for Resale

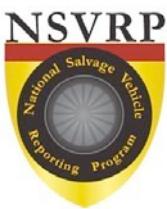
NSVRP's first example provides extensive documentation of the ways in which improper and in some cases illegal actions by all segments of the vehicle disposal chain create an environment in which salvage or flood-damaged vehicles may be offered for sale with improperly clean titles. Similar improper and illegal actions by the vehicle disposal chain took place in this example as well, but this example goes further to show one path Hurricane Sandy vehicles are taking to land in the hands of unsuspecting consumers.

NSVRP's second example shows how groups take advantage of the opportunities created by a defective system and are able to remarket badly damaged, clean title vehicles to unsuspecting individuals by using the Internet and layers of insubstantial businesses which offer little in the way of protection to consumers.

The vehicles discussed above are ideal vehicles for unethical resellers to purchase and resell. When unethical resellers offer these vehicles for resale to unsuspecting buyers, they simply fail to disclose prior damage and sell to the buyer as though the vehicles were clean vehicles with good histories.

The FTC's Proposed New Rule seems to ignore any obligation to disclose defects that are known to the seller but that for various reasons were not documented. By not going farther with the Rule to require disclosure of known prior damage history, the FTC is allowing a practice that clearly harms consumers, that NSVRP's research shows is occurring on a regular and significant basis, and that could be effectively addressed with the proper Rule.

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Conclusion

According to the National Insurance Crime Bureau (NICB) there have already been some 250,000 flood related auto claims reported by insurance companies as a result of Hurricane Sandy. Based upon the typical model age cutoff for consumers to purchase collision and comprehensive insurance and the fact that the average age of a vehicle on the road is now more than 11 years old, there are in addition to these insurance reported claims certainly an even a larger number of other vehicles, including self-insured fleets as well as private parties without collision and comprehensive insurance coverage for their vehicles, that were ruined in Hurricane Sandy. In total there are likely more than 500,000 vehicles affected by Hurricane Sandy.

Some of these vehicles are being crushed and scrapped, and others are being sold for export. However, a great many are being resold domestically to the public through less formally regulated channels including Craigslist, eBay Motors, curb stoning or other means subject to similar or greater abuses. The flow chart on page 14 details the many channels that exist when these vehicles are being resold. Many of these provide options and opportunities to bypass proper titling, branding and reporting and are being utilized to hide the total loss histories of Hurricane Sandy-damaged vehicles. Unfortunately, natural disasters are not the only times these types of scenarios occur. Nearly every single online salvage auction that NSVRP has monitored offers severely damaged cars with inexplicably clean titles and many are purchased at these auctions and resold with undisclosed prior damage to consumers through these various means.

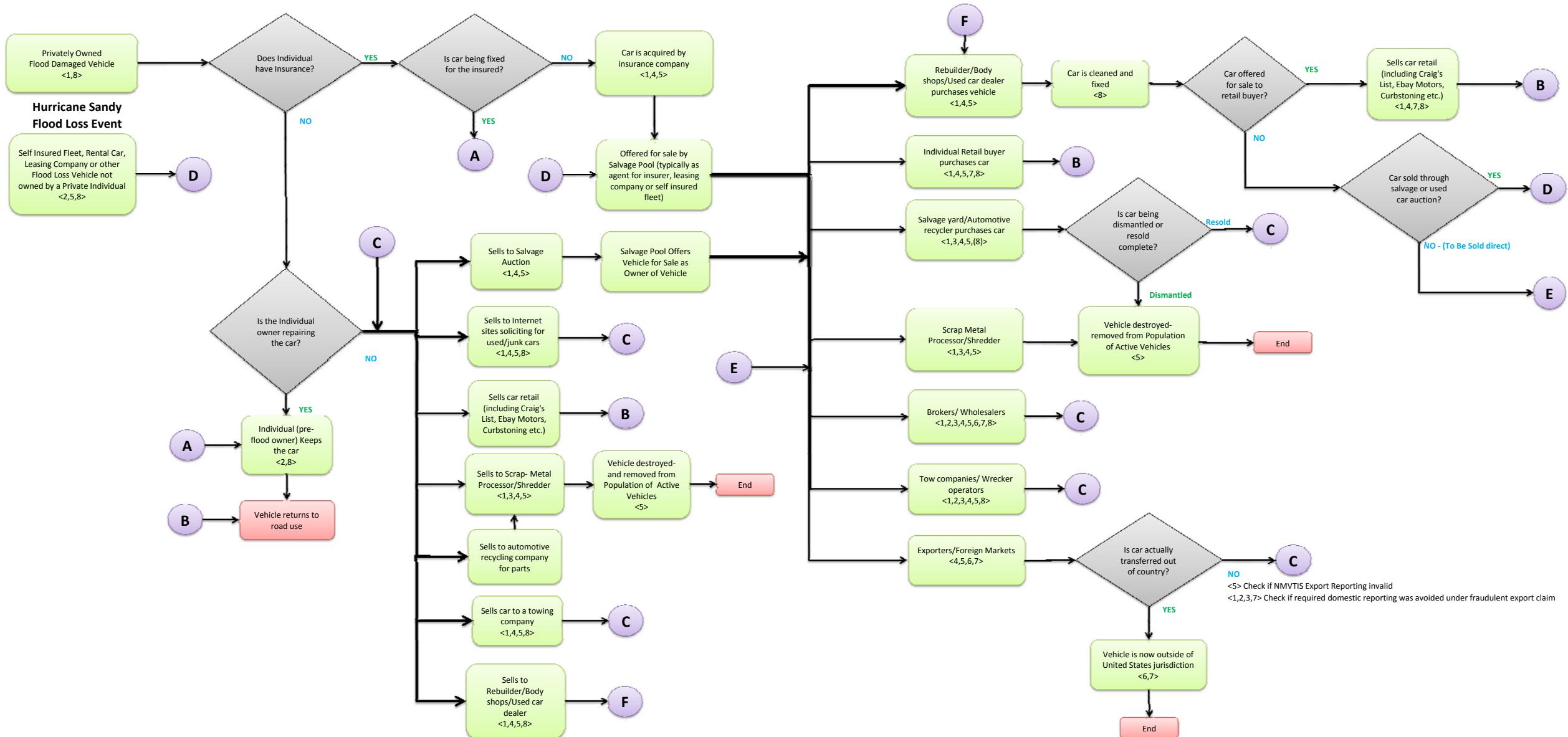
Adding to the complexity and to the opportunities for abuse are the inconsistent rules for branding and titling that exist between states. Parties that make up the salvage vehicle supply chain and those making up segments of the resale marketplace can take advantage of these limitations and disconnects in communication between jurisdictions to place unsuspecting consumers at risk. These abusers also place ethical business operators at a disadvantage and at risk. Clearly, there are many state and federal entities that bear the responsibility for addressing these supply chain issues, and the FTC is not among them. However, with a thoughtful approach to the Used Car Rule the FTC can greatly mitigate the impact of this system's weaknesses on American consumers who buy approximately 40 million used automobiles each year.

The violations noted in the examples above have involved segments of the vehicle disposal chain including some insurers, fleet operators, salvage pools, towing companies, domestic resellers and exporters. Partly as a result of these violations, and the efforts by parties to subvert the regulation and reporting process, the various car history report service options that are available to notify the public have not been able to capture many of the Hurricane Sandy flood transactions.

We would be remiss if we did not note, NMVTIS reporting violations notwithstanding, that NMVTIS is a massive repository of title branding and total-loss information. NADA's March 13, 2009, comments that NMVTIS only included reporting from 13 states came as the DOJ rule obligating compliance with NMVTIS had just been published at the end of January 2009. In fact, reporting was mandated under the federal rule beginning in April of 2009. Consequently, the comments provided to the FTC as to the very limited compliance with NMVTIS by the states and by other parties was very much out of date, and essentially at a time that compliance was still voluntary and without a federal rule in place. The situation has now changed markedly, and as of the end of 2012, junk/salvage/insurance (J/S/I) entities from all jurisdictions report into NMVTIS, forty-one (41) states presently provide data to NMVTIS and all remaining states are expected to meet their legal obligations to report into NMVTIS in the near future as their systems are modernized to comply with the law. In the most current reporting period, October 2010 to September 2011, brands captured in NMVTIS steadily increased from nearly 63 million to more than 67 million. In addition there were more than 13.7 million J/S/I records reported during this time.

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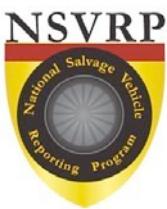
Hurricane Sandy Total Loss Flood Vehicle Flow Diagram



Legends (noted in boxes):

- 1 - Transfer of Title is typically required in this transaction due to a change in ownership. Applicable rebranding rules also apply.
 - 2 - Transfer of Title may not be applicable, but rebranding may be required in this loss event depending upon state laws.
 - 3 - Vehicle is not being placed back on road domestically. Vehicle will not be re-registered but title should be transferred, but in domestic transactions may in some states require being turned in for reporting.
 - 4 - NHTSA Federal Odometer Act (TIMA) recording at time of transfer required if vehicle is 0-9 years old.
 - 5 - NMVTIS rules apply to this transaction. For applicable vehicles 0-4 model years required for insurers, all years for other obligated reporting entities.
 - 6 - Customs disclosure and NMVTIS export flag reporting may be required for these transactions.
 - 7 - Applicable transfer fees, filing fees and/or sales tax collection and reporting may be required.
 - 8 - State safety inspection may be required for rebranding and before retitling for road use can take place.

Last Updated 1/17/2013



While discussion of the findings of improper branding, title skipping and other issues identified by NSVRP and various federal agencies can provide the FTC with a general idea of the scope and impact of the problem, NSVRP would also like to bring to the attention of the FTC a cost-benefit report that was undertaken at the recommendation of the U.S. Government Accountability Office (GAO). This study was conducted by the Logistics Management Institute at the request of DOJ and determined that, as NMVTIS nears completion, NMVTIS would achieve net projected benefits of up to \$11.3 billion each year by deterring and reducing auto theft, brand washing, odometer fraud, and related crimes. Implementing the Used Car Rule including reporting based upon the NMVTIS data would only serve to increase the net annual benefit that the public will gain from the NMVTIS data.

A dire scenario becomes even more severe when the growing trends of online sales and consumer participation at salvage pool auctions are taken into consideration. According to the National Independent Automobile Dealers Association's Used Car Industry Report, 2011 Facts and Statistics in the Used Motor Vehicle Industry, nearly 30 percent of all used car sales – approximately 12 million vehicles – took place directly over the Internet. Further, salvage auctions that were once open only to industry bidders are now not only advertising to consumers the use of buyer brokers, but they are also providing Internet programs such as Copart's SalvageReseller.com which allow consumers to buy salvage cars online with no dealer license required.

When total loss vehicles do not get properly classified by insurers or other sellers, are not properly branded and are not properly and swiftly reported into the appropriate state and federal databases by those entities such as auto auctions that are handling them prior to being offered for resale, a clean title coupled with no requirement for dealers to disclose known prior vehicle history means these middlemen are absolved of any obligation to disclose to the buyer their knowledge that these were total loss vehicles.

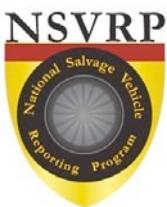
In these cases, no vehicle history report available can provide consumers with accurate insight as to the true mechanical condition of these damaged vehicles. The net result is that intermediate commercial buyers including brokers and dealers are knowingly buying thousands of these vehicles and some are taking advantage of the undocumented damage status to then turn around and offer these cars for resale to an unsuspecting public with the only means for consumers to be aware of their total-loss damage history being disclosure requirement of prior history knowledge by the seller.

Recommendation

NSVRP's position is that consumers will only be protected from these types of fraud if the FTC mandates that sellers must disclose known prior history information about the cars they sell and that sellers must be required to check each vehicle's history with a history report that incorporates NMVTIS data in their report, and to include a warning sticker on the vehicle if the NMVTIS vehicle history data indicates that the vehicle is or has been reported as a total-loss by an insurance company or has been reported as acquired by a NMVTIS junk/salvage reporting entity, or the certificate of title contains a brand. The process must also include in the final sale paperwork to be signed and dated by the seller and the buyer a notation of whether a warning sticker was or was not included. In addition, the documentation must note the date on which the NMVTIS report was run. The purchaser should also be given a copy of the car history report for his or her records.

Such strengthening of the Rule would go far in preventing business practices that are anticompetitive or deceptive or unfair to consumers without unduly burdening legitimate business activity.

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Based on our collective experience, this NSVRP proposal would be efficient to operate, would provide a high level of protection for consumers, and would be easy to enforce. In the case of a complaint by a potentially defrauded consumer, it would provide a clear way to determine if the consumer was provided notification as required under law, and would also allow for a way to validate whether the NMVTIS information available at the time of the sale was properly disclosed and whether a warning was required under the FTC rule at the time of the sale. This provides protections to both the consumer and to the dealer in case of litigation and may provide the defrauded consumer with adequate avenues for recourse, depending upon which entity or entities acted illegally, without unduly burdening sellers to meet the requirements or the FTC to enforce them. Essentially this basic system is in place and operating in California as a result of the passage of AB1215 in 2011.

Additionally, requirement of the warning sticker avoids potential confusion by consumers regarding brand variations from state to state. It also avoids the problem of posting multiple-page reports along with the Buyers Guide.

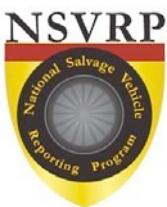
This NSVRP-proposed revision to the FTC Used Car Rule would also allow for higher value commercial car history reports to incorporate the NMVTIS data in their products and offer a more complete report to vehicle purchasers while meeting the need to provide disclosure to the public. It eliminates the possibility of NMVTIS being seen as having a monopoly or being in competition with the other car history report companies since both the traditional car history report services and the new NMVTIS public portal providers are all commercial ventures and not government agencies. Most dealers already use one of the major car history reports or the NMVTIS public portal reports, and in California the car history report companies have successfully incorporated NMVTIS reporting into their products at little additional cost to the dealer.

Our research has demonstrated that when it comes to total-loss information NMVTIS routinely carries explicit notification and reporting of total-loss information more quickly and more completely than any other source as a result of the legal requirement for such reporting by junk/salvage/insurance (J/S/I) reporting entities who are obligated to report directly to NMVTIS independent of any state obligations to report their title and brand information. This J/S/I reporting even includes the acquisition of vehicles handled for disposal for others, such as when a salvage pool sells a total-loss vehicle for an insurer and which would not otherwise have been reported as a title transfer for state reporting requirements. Only one or two states capture this important J/S/I information and so in the vast majority of cases it is available only through the NMVTIS database.

Furthermore, the J/S/I reporting typically has hit the NMVTIS database as a result of the direct reporting into a NMVTIS data consolidator or to NMVTIS directly as soon as it is sent in by the J/S/I reporting entity and shows up in a NMVTIS inquiry by the next day. It is quite common for a J/S/I report record to be available in a NMVTIS inquiry a month or more before it shows up in a state search or any other source simply because the NMVTIS update is overnight and the state processing typically takes place after a paperwork or batch processing delay as a result of internal paperwork processes or as a result of computer systems needing modernization. The traditional title and branding sources available to car history report services rely on waiting until getting updated data from the states, so the lag in processing and updating affects reporting from those sources.

However, there is much other information that NMVTIS does not include that is also very important for consumers to know – especially when they are considering for purchase the large majority of cars that are determined not to be total-loss vehicles. This information includes available police accident reports, which often describe the nature of accident damage. These reports also can do a very good job of showing service

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record reporting and other important indicators that can be very useful in evaluating the condition of a traditional non-total-loss vehicle. The ideal report includes both information to avoid purchasing undisclosed significantly wrecked or flooded vehicles as well as information to help determine that one is buying a vehicle that was well cared for and maintained.

While the minimum threshold of FTC-required vehicle history report provision should be the NMVTIS data in order to provide the best warning flag for total-loss, junk-salvage and branded title vehicles, the public is best served when they can see that NMVTIS data and in addition see the relevant reporting that is included in the car history reporting services that also incorporate so much additional data that is useful in evaluating the service condition and the overall history of a vehicle.

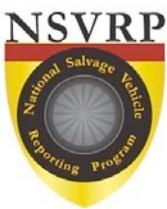
Why the Disclosure Warning Must be Based Upon NMVTIS Data

There is one final, yet critical reason that the disclosure and warning sticker must be based upon NMVTIS reported data. As we have amply documented there are many parties in the vehicle supply chain who violate the law and who apparently do so purposely, presumably with the intent of enhancing their profits – often at the ultimate expense of a defrauded consumer. In many cases the seller to the consumer may itself be unaware of the undisclosed damage or total-loss history, while in other cases they are either knowledgeable or may even have been a part of the initial violations. By linking the warning disclosures to the existence of a junk/salvage/insurance report being filed in NMVTIS as a trigger for the warning sticker being displayed on the vehicle, the FTC may provide a cause of action for a defrauded party to be able to seek recourse from the parties in the supply chain who violated the law when they did not report into NMVTIS. This provides a measure of legal recourse protection to the public in the face of fraudulent activity that would not otherwise exist if the disclosure were not tied to NMVTIS. It should also be noted that this protection might also provide other parties, including responsible resellers, to have recourse from fraudulent upstream providers when they buy vehicles and are unaware of prior total-loss history and subsequently resell them to consumers who are also unaware of the prior damage.

Clearly from what we have presented, there are many reasons why complete information is not possible to possess on total-loss and other accident and service history. That is why regardless of the availability of NMVTIS and other history data we agree with the FTC's recommendation that it is the best policy to have all used vehicles inspected by a qualified mechanic who is independent of the seller. We also believe it may be worthwhile for the FTC to recommend that it is also important to know from whom one is buying, and to check references and make sure as to the reliability and integrity of the seller. No guarantee is any good if the seller is not going to stand behind it. This advice becomes especially important when consumers buy on venues such as Craigslist or from curbstoners.

Again, we would like to stress that inclusion of the NMVTIS data as a requirement for reporting does not disadvantage any commercial providers since all public access portal providers of NMVTIS reporting are commercial companies who are offering their reports for sale to the public, the same as the traditional car history report providers. In California the traditional car history report providers such as AutoCheck and CARFAX have included the NMVTIS data in their reports and offer the service to their customers with the NMVTIS data as part of their product offering. All the commercial providers are competing in California and NMVTIS itself as a government program does not offer a product of its own to compete with anyone – it is simply a data provider for the products in the same way that each of the states offers data to the report providers for inclusion in their individual offerings.

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Sample warning as required by California AB1215, which went into effect July 1, 2012:

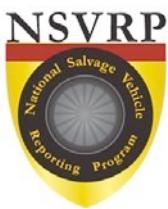
WARNING

According to a vehicle history report issued by the National Motor Vehicle Title Information System (NMVTIS), this vehicle has been reported as a total-loss vehicle by an insurance company, has been reported into NMVTIS by a junk or salvage reporting entity, or has a title brand which may materially affect the value, safety, and/or condition of the vehicle. Because of its history as a junk, salvage or title-branded vehicle, the manufacturer's warranty or service contract on this vehicle may be affected. Ask the dealer to see a copy of the NMVTIS vehicle history report. You may independently obtain the report by checking NMVTIS online at www.vehiclehistory.gov.

Under the NSVRP proposal, required disclosure of a branded title or junk salvage reporting history by sellers will give defrauded consumers a first line of defense. In the case that the reseller was not aware of prior history, it is likely that by requiring the seller to provide NMVTIS information to the buyer as part of the sales process, the NSVRP proposal may provide an additional cause of action for the defrauded party due to the fact that, unlike other vehicle history databases, entities are legally required to report into NMVTIS. Therefore, a NMVTIS vehicle history report from a NMVTIS data provider could give the defrauded consumer recourse with whichever party or parties broke the law in allowing an inaccurately branded vehicle to reenter the used car marketplace. It should also provide a way for a legitimate dealer to prove that they properly provided disclosure and to document the information that was available at the time of the sale. Naturally, when the dealer can be proven to have direct knowledge of undisclosed damage either as a result of being a party who purchased the vehicle in damaged condition themselves, or through some other such method of proof, then the dealer should still be obligated to disclose to a buyer the existence of that damage knowledge and should not be allowed to be silent and take advantage of the fact that the history reporting entities are not aware of the undocumented damage history when the dealer is aware of that damage.

The FTC in its Notice of Preliminary Rule Making (NPRM) declined to consider NMVTIS as a mandatory database for use in providing warning information to consumers. We believe that some of the reasons provided by the FTC were based on obsolete information that may have applied in 2009 just after the NMVTIS rule was published and compliance by states and J/S/I reporting entities were just beginning to take place.

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Today NMVTIS is extremely robust. In fact:

- Insurers, salvage pools, junkyards and recyclers in all 50 states are required to directly report all the total loss vehicles they handle to NMVTIS independent of status of their state's reporting, and they update their data within 30 days of acquiring or reselling a salvage or total-loss vehicle. Many are reporting on this activity as soon as they acquire the vehicle without any delay. This legally mandated reporting of J/S/I activity beyond just titling and branding information is the key differentiator of the NMVTIS data from all other data sources from the states.
- The FTC noted that in 2009 only a small number of states were reporting into NMVTIS. Presently 41 states report title information into NMVTIS. The remaining states either presently are in the process of becoming integrated into NMVTIS reporting or are committed to doing so as soon as they are able.
- As of September 2011, roughly 88 percent of all registered vehicles are included in the NMVTIS database, and the remaining states are on track to also be included soon.
- As of December 2012, NMVTIS had over 410 million current state title records on file, 385 million title history records for vehicles that were retitled into another state, more than 76 million brand records, and more than 52 million reported total loss vehicle records. In the last six months of 2012 alone, NMVTIS processed over 31 million title updates, 2.5 million brand updates and added roughly 6 million new junk/salvage/insurance records.

California Assembly Bill 1215, which requires all California auto dealers to check NMVTIS before offering a used car for sale and post a prominent warning sticker on the vehicle itself if the vehicle is in NMVTIS or has a branded title, was enacted in 2011 with widespread bi-partisan support. The law took effect July 1, 2012 and has not proven too costly, burdensome or unworkable.

Clearly, the need for the FTC to fulfill its mission of preventing business practices that are anticompetitive, deceptive or unfair to consumers through its Used Car Rule has never been more critical. Unfortunately, the FTC's proposed Used Car Rule appears to actually absolve dealers from the obligation to report on the history of prior damage vehicles, providing them with the opportunity to resell the vehicles secure in the knowledge that the car history reports will not disclose the prior damage histories of these vehicles.

NSVRP urges the FTC to reconsider its position on known prior damage disclosure, and to also require a warning based upon a vehicle history report that includes NMVTIS information and therefore carries the authority of the federal law that created it, thus providing defrauded consumers with an avenue for recourse whether or not the reseller is aware of prior damage.

Respectfully submitted on behalf of the NSVRP Board,

Howard G. Nusbaum
Administrator, NSVRP

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NSVRP Responses to FTC Questions

Following please find NSVRP's responses to the Commission's questions based upon the information and evidence provided in our submission.

1. Should the Buyers Guide be revised, as discussed in SUPPLEMENTARY INFORMATION PART IVA, to include check boxes for disclosing manufacturers' and other third-party warranties? Why or why not? What alternative revisions to the Buyers Guide, if any, should be adopted to improve disclosure of manufacturers' and third-party warranties? N/A

2. Should the proposed vehicle history statement on the front of the proposed Buyers Guide be adopted? Why or why not?

No. In the preceding pages, NSVRP has illustrated how abuses taking place in the sale of used and salvage vehicles – including major corporations integral to the total-loss and salvage disposal process violating state and federal branding and disclosure laws – result in unbranded flood damaged vehicles reentering the used car marketplace for resale to consumers who could only know the vehicles' true histories through required disclosure of known vehicle history by the seller.

In its ongoing monitoring of the dispensation of salvage and total loss vehicles, NSVRP has identified thousands of cases of improper and in some cases illegal actions involved in offering catastrophically damaged vehicles for sale with improperly clean titles without any official prior damage disclosure, including outright title skipping, failure to report vehicles into NMVTIS as required by law, failure to apply for new titles, failure to apply for properly branded titles, and selling vehicles without proper transfers recorded when required by law. When unethical resellers offer these vehicles for resale to unsuspecting buyers, they simply fail to disclose prior damage and sell to the buyer as though the vehicles were clean vehicles with good histories and, in many cases, NSVRP is able to track these potentially unsafe and fraudulently or improperly branded cars from insurers and other parties through the salvage auctions and middlemen as they ultimately pass into the hands of unsuspecting consumers.

Unfortunately, the FTC's proposed Used Car Rule appears to actually absolve dealers from the obligation to report on the history of prior damage vehicles, providing them with the opportunity to resell the vehicles secure in the knowledge that the car history reports will not disclose the prior damage histories of these vehicles.

3. Should the proposed vehicle history statement be modified? If so, how?

Yes. The FTC's Proposed New Rule seems to ignore any obligation to disclose defects that are known to the seller but that for various reasons were not documented. By not going farther with the Rule to require disclosure of known prior damage history, the FTC is allowing a practice that clearly harms consumers, that NSVRP's research shows is occurring on a regular and significant basis, and that could be effectively addressed with the proper Rule.

Therefore, NSVRP urges the FTC to reconsider its position on known prior damage disclosure, and to also require a warning based upon a vehicle history report that includes NMVTIS information and therefore carries

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the authority of the federal law that created it, thus providing defrauded consumers with an avenue for recourse against any party who failed to make required reporting into NMVTIS on the vehicle in its prior handling as a salvage or total-loss vehicle independent of any potential claim against the reseller, whether or not the reseller is aware of prior damage. In a situation where the final seller was unaware of the prior damage it may additionally provide some recourse to that reseller who may also have been harmed by the illegal actions of prior parties who failed in meeting their legal obligations to report into NMVTIS on this vehicle.

The proposed vehicle history statement would include the following:

- Seller disclosure of known prior history information about the cars they sell;
- Seller review of each vehicle's history with a history report that incorporates NMVTIS data; seller to include a warning sticker on the vehicle if the NMVTIS vehicle history data indicates that:
 - the vehicle is or has been reported as a total loss by an insurance company;
 - the vehicle has been reported as acquired by a NMVTIS junk/salvage reporting entity; or
 - the certificate of title contains a brand.
- Inclusion in the final sale paperwork, to be signed and dated by the seller and the buyer, a notation of whether a warning sticker was or was not included and the effective date on which the NMVTIS data was accessed.

Under the NSVRP proposal, required disclosure of a branded title or junk salvage reporting history by sellers will give defrauded consumers a first line of defense. In the case that the reseller was not aware of prior history, it is likely that by requiring the seller to provide NMVTIS information to the buyer as part of the sales process, the NSVRP proposal may provide an additional cause of action for the defrauded party due to the fact that, unlike other vehicle history databases, entities are legally required to report into NMVTIS.

Therefore, a NMVTIS vehicle history report from a NMVTIS data provider could give the defrauded consumer recourse with whichever party or parties broke the law in allowing an inaccurately branded vehicle to reenter the used car marketplace. It should also provide a way for a legitimate dealer to prove that they properly provided disclosure and to document the information that was available at the time of the sale. It may also provide recourse for the legitimate dealer defrauded into purchasing a vehicle with undisclosed prior damage as a result of illegitimate non-reporting by a previous party in the supply chain of the vehicle.

Naturally, when the dealer can be proven to have direct knowledge of undisclosed damage either as a result of being a party who purchased the vehicle in damaged condition themselves, or through some other such method of proof, then the dealer should still be obligated to disclose to a buyer the existence of that damage knowledge and should not be allowed to be silent and take advantage of the fact that the history reporting entities are not aware of the undocumented damage history.

Based on our collective experience, we believe this NSVRP proposal would be efficient to operate, would provide a high level of protection for consumers, and would be easy to enforce. In the case of a complaint by a potentially defrauded consumer, it would provide a clear way to determine if the consumer was provided notification as required under law, and would also allow for a way to validate whether the NMVTIS information available at the time of the sale was properly disclosed and whether a warning was required under the FTC rule at the time of the sale. This provides protections to both the consumer and to the dealer in case of litigation and may provide the defrauded consumer with adequate avenues for recourse, depending upon which entity or entities acted illegally, without unduly burdening sellers to meet the requirements or the FTC to enforce them. Essentially this basic system is in place and operating in California as a result of the passage of AB1215 in 2011.

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Additionally, requirement of the warning sticker avoids potential confusion by consumers regarding brand variations from state to state. It also avoids the problem of posting multiple-page reports along with the Buyers Guide.

Sample warning as required by California AB1215, which went into effect July 1, 2012:

WARNING

According to a vehicle history report issued by the National Motor Vehicle Title Information System (NMVTIS), this vehicle has been reported as a total-loss vehicle by an insurance company, has been reported into NMVTIS by a junk or salvage reporting entity, or has a title brand which may materially affect the value, safety, and/or condition of the vehicle. Because of its history as a junk, salvage or title-branded vehicle, the manufacturer's warranty or service contract on this vehicle may be affected. Ask the dealer to see a copy of the NMVTIS vehicle history report. You may independently obtain the report by checking NMVTIS online at www.vehiclehistory.gov.

4. Should the proposed vehicle history statement list both ftc.gov/ususedcars (the FTC Web site) and vehiclehistory.gov (the NMVTIS Website)? Should it list only ftc.gov/ususedcars? Should it list only vehiclehistory.gov? Why or why not?

NSVRP believes that a required vehicle history disclosure and warning sticker must be based upon NMVTIS reported data. As we have amply documented in our submission, there are many parties in the vehicle supply chain who violate the law and who apparently do so purposely, presumably with the intent of enhancing their profits – often at the ultimate expense of a defrauded consumer. In many cases the seller to the consumer may itself be unaware of the undisclosed damage or total-loss history, while in other cases they are either knowledgeable or may even have been a part of the initial violations. By linking the warning disclosures to the existence of a junk/salvage/insurance report being filed in NMVTIS as a trigger for the warning sticker being displayed on the vehicle, the FTC may provide a cause of action for a defrauded party to be able to seek recourse from the parties in the supply chain who violated the law when they did not report into NMVTIS.

This provides a measure of legal recourse protection to the public in the face of fraudulent activity that would not otherwise exist if the disclosure were not tied to NMVTIS. It should also be noted that this protection might also provide other parties, including responsible resellers, to have recourse from fraudulent upstream providers when they buy vehicles and are unaware of prior total-loss history and subsequently resell them to consumers who are also unaware of the prior damage.

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However, while the minimum threshold of FTC-required vehicle history report provision should be the NMVTIS data in order to provide the best warning flag for total-loss, junk-salvage and branded title vehicles, the public is best served when they can see that NMVTIS data and in addition see the relevant reporting that is included in the car history reporting services that also incorporate so much additional data that is useful in evaluating the service condition and the overall history of a vehicle. Further, inclusion of the NMVTIS data as a requirement for reporting does not disadvantage any commercial providers since all public access portal providers of NMVTIS reporting are commercial companies who are offering their reports for sale to the public, the same as the traditional car history report providers. In California the traditional car history report providers such as AutoCheck and CARFAX have included the NMVTIS data in their reports and offer the service to their customers with the NMVTIS data as part of their product offering. All the commercial providers are competing in California and NMVTIS itself as a government program does not offer a product of its own to compete with anyone – it is simply a data provider for the products in the same way that each of the states offers data to the report providers for inclusion in their individual offerings.

NSVRP would recommend the link http://www.vehiclehistory.gov/nmvtis_vehiclehistory.html for consumers to view and research approved NMVTIS data providers.

5. Should the List of Systems include catalytic converters? Why or why not? N/A

6. Should the List of Systems include airbags? Why or why not? N/A

7. Should the proposed statement, “Si usted no puede leer este documento en ingle’s, pidale al concesionario una copia en espan~ol,” directing Spanishspeaking consumers to ask for a copy of the Buyers Guide in Spanish be adopted? Why or why not? What alternative statement, if any, should be considered? What alternative proposals to alert Spanish-speaking customers to the Spanish Buyers Guide should be considered? N/A

8. Identify and describe deceptive practices, if any, that are prevalent in Internet used vehicle sales. Provide studies, analyses, and data demonstrating the extent of those practices. If deceptive practices are prevalent in Internet used vehicle sales, what regulatory steps, if any, should the FTC consider taking to prevent those practices?

According to the National Independent Automobile Dealers Association’s Used Car Industry Report, 2011 Facts and Statistics in the Used Motor Vehicle Industry, in 2010 just below 30 percent of all used car sales took place directly over the Internet. Not only is this a significant portion of total used car sales, it also reflects a huge jump from the 21 percent of used car sales reported to take place over the internet in 2009. With approximately 12 million vehicles sold online each year, it seems advisable for the FTC to address Internet sales of used cars. If similar year-over-year growth continues it will be essential.

Additionally, the 30 percent referenced above does not apply to salvage auctions. Salvage auctions handle roughly 3.5 million vehicles each year, which is significant in relation to the total used car market of approximately 30-40 million used car sales annually. The vehicles handled by the salvage pools are no longer only massively damaged wrecks that go to junkyards and shredders. In recent annual reports, the major public

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salvage pool corporations indicated that the share of non-insurance sourced vehicles at their facilities was about 20 percent of their total vehicle sourcing, and this percentage has been rising for years as a conscious business objective. As an example, Copart, which is the largest salvage pool entity in the U.S., noted that it presently purchases more used cars from the public for resale than any other dealer in the state of NJ. This statement was made before Hurricane Sandy, and NSVRP research confirms that the large number of vehicles damaged in Hurricane Sandy has led to dramatic increases in the volumes of non-insurance sourced cars by the salvage pools on both an absolute and a percentage basis.

As a result, an ever-increasing portion of vehicles at the salvage pool auctions is being resold for reuse on the road. As we have shown in our submission, many of these vehicles are improperly unbranded or unreported vehicles that create special risks for the driving public when sold with undocumented histories and undisclosed damage.

Buyers at salvage auctions include rebuilders, body shops, used car dealers, scrap metal processors and automotive recyclers, but more and more often also include individual retail purchasers and brokers acting on behalf of consumers. In fact, a recent review of relevant state law revealed that only seven states currently require Salvage Buyer Identification Cards and/or have prohibitions on sales to the public. The remaining states have some licensing requirements for in-state possession or processing, limits on numbers of purchases or rebuilding restrictions, minimal regulation of salvage pool sales, or totally non-restricted sales.

Further, many auction companies now directly advertise broker services to allow members of the public to purchase vehicles, and these purchases are primarily made online. These services are provided to potential buyers who may not be eligible to bid due to licensing restrictions, as you can see from the direct copy of marketing language from the Copart website listed below.

Broker Services Provide Bidding Eligibility Despite Licensing Restrictions
([www.copart.com/c2/how to bid auctions online.html](http://www.copart.com/c2/how_to_bid_auctions_online.html))

"If you are unable to bid at a given facility based on your bidding eligibility or licensing restrictions, you may choose to work with a Registered Broker. Registered Brokers are professional buyers who are making their services available to assist in the buying process. Registered Brokers can offer a variety of value added services such as bidding and buying advice, repair services, transportation, export shipping, etc. Registered Broker details can be found under the industry links tab on the top of home page. Click here to view now."

Registered Brokers:

- are eligible to bid on vehicles you may not be able to bid on due to licensing restrictions.
- will bid on these vehicles on your behalf - expanding your buying power.
- offer a variety of value added services such as inspection and transportation services."

Finally, all of the research that NSVRP has undertaken of improper titling, branding and structural corruption in the process of the sale of used and salvage cars has involved online sales. NSVRP has monitored approximately 80,000 water flood vehicles already sold and has captured records of thousands more listed in the inventories of the auctions but not yet posted for sale. There may be 500,000 or more Sandy flood loss vehicles of all kinds, many not even covered by insurance. Our research results indicate that significant

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numbers of monitored flood-damaged vehicles sold at salvage auto auctions are being offered for sale with clean titles. Many of these flood and water-damaged automobiles are sold at auction with water damage or 'FLOOD' listed in the auction notes but the loss or sale has not been reported on the official title paperwork or in mandated databases, and so they are being sold with clean, unbranded titles.

NSVRP's first example provides extensive documentation of the ways in which improper and in some cases illegal actions by all segments of the vehicle disposal chain create an environment in which salvage or flood damaged vehicles may be offered for sale with improperly clean titles. Similar improper and illegal actions by the vehicle disposal chain took place in the second example as well, but that example goes further to show one path Hurricane Sandy vehicles are taking to land in the hands of unsuspecting consumers. Namely, NSVRP's second example shows how groups take advantage of the opportunities created by a defective system and are able to remarket badly damaged, clean title vehicles to unsuspecting individuals by using the Internet and layers of insubstantial businesses which offer little in the way of protection to consumers.

Additionally, the organization looking to resell the total loss, clean title Sentra in our second example to an unsuspecting consumer at near retail book value is no small-time, inexperienced group. The business posting the Craigslist ad – BestCarPriceUSA.com – leads to more than a dozen other businesses and multiple parties, a number with criminal records for automotive-related crimes, as detailed in the graphic representation of interconnected businesses and parties on page 12 of this submission. Clearly this is all set up in a way that is designed to defraud an unsuspecting consumer.

Unfortunately, natural disasters are not the only times these types of scenarios occur. Nearly every single online salvage auction that NSVRP has monitored offers severely damaged cars with inexplicably clean titles and many are purchased at these auctions and resold with undisclosed prior damage to consumers through these various means.

As far as regulatory actions the FTC can put in place to address online auto sales fraud, NSVRP believes that our proposal of mandated requirement of known vehicle history and requiring sellers to provide information based on NMVTIS data will expose segments of the vehicle supply chain to potential liability due to the force of law carried by NMVTIS reporting requirements, therefore making them less likely to engage in the many violations we have outlined that make these total loss clean title cars available to unethical resellers who would then sell them to unsuspecting consumers.

9. What is the extent of consumer injury, if any, that results from consumers' inability to see information on the Buyers Guide prior to purchase in Internet used vehicle sales in which consumers cannot visually inspect a car and see the Buyers Guide prior to purchase? Provide examples, studies, analyses and data indicating the nature and extent of such consumer injury.

While current and proposed Buyers Guide language may not provide extremely useful information to prospective buyers planning to make a purchase without an opportunity to examine a vehicle in-person before purchase, suggested provisions such as known prior history disclosure and prominent warning if the vehicle is in NMVTIS or has a branded title would provide these buyers with additional important insight as to the vehicle's true condition.

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10. To what extent do consumers who consummate Internet used vehicle sales online receive copies of the Buyers Guide with their final sales contracts? Provide examples, studies, analyses, and data to support your answer. N/A

11. The FTC also invites comments on the nature and extent of information that it should make available on the Web site, ftc.gov/usedcars that it proposes to create in connection with the proposed Buyers Guide.

The FTC should reference other informational websites such as the DOJ NMVTIS site vehiclehistory.gov, and other sites determined by the FTC at it determines to provide information useful to the public. Additionally, the FTC should provide links to information provided by other government websites providing consumers with important auto buying information such as the FBI's recommendations about practicing due diligence in buying vehicles online at www.fbi.gov/news/stories/2011/august/car_081511. See our response to question 12 below as part of our response to this question.

12. If the FTC creates the proposed Web site, ftc.gov/usedcars, should the FTC include active links to other Web sites, such as the Web sites of providers of vehicle history reports, and, if so, which Web sites? If the FTC includes active links to other Web sites, what mechanisms and standards should the FTC apply to ensure that it directs consumers only to Web sites and firms that are trustworthy and that accommodate consumer privacy and data security expectations?

We strongly recommend that the FTC provide a link to the U.S. Department of Justice (DOJ) vehiclehistory.gov website as a method of providing consumers a way to access vehicle history reporting services that have become authorized public portal access providers of NMVTIS. Since vehiclehistory.gov is the DOJ website that already provides links for the public to access reporting services that incorporate NMVTIS data, this would be a simple and accurate way to direct consumers to those sites via the existing DOJ referral link page. DOJ maintains and updates the information on that page, and also provides a constantly rotating list of the links that has effectively provided all NMVTIS public portal providers an equal opportunity to inquiries while shuffling the order very frequently to avoid unfair presentation advantages to any provider.

We would recommend that the FTC provide links to other law enforcement and consumer websites that can provide information about used and salvage vehicles issues. The FTC should simply link to the vehiclehistory.gov/nmvtis_links.html resource page and use that link as a way to direct consumers to the non-commercial consumer and law enforcement groups that are already accessible on the DOJ website through this vehiclehistory.gov resource links page.

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