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June 8, 2023

Via e-mail: irrc@irrc.state.pa.us

George D. Bedwick, Chairman
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

Re: IRRC #3373; Proposed Rulemaking, Office of Attorney General
[37 Pa. Code Ch. 301] Automotive Industry Trade Practices

Dear Chairman Bedwick:

I write on behalf of the National Auto Auction Association (“NAAA”) to provide comments on the above-referenced Proposed Rulemaking regarding Automotive Industry Trade Practices (the “Proposed Rulemaking”).

Headquartered in suburban Washington D.C., NAAA is a trade association for wholesale motor vehicle auctions. It comprises more than 340 domestic and international wholesale member auctions, with an additional 100 associate members, including 18 member auctions located within the Commonwealth of Pennsylvania. NAAA’s mission is to protect and promote the interests of both its members and the wholesale auto auction industry. NAAA member auctions provide the marketplace for consignors to sell vehicles to licensed dealers, who, in turn, sell the vehicles to retail consumers. In 2022, NAAA member auctions facilitated the sale of 6.6 million vehicles.

We appreciate the opportunity to offer comments on this Proposed Rulemaking. By way of background, NAAA member auctions facilitate motor vehicle transactions by providing the trusted forum for commercial sellers and licensed dealers to transfer and reassign vehicles according to their true market value. To that end, NAAA promotes industry standards that are designed to ensure secure and transparent transactions for all parties involved. Our clients, both sellers and buyers, rely on NAAA member auctions to establish and enforce the parameters for sale - whether it is receiving vehicles from sellers, communicating with sellers when staging vehicles for sale, or ensuring that only licensed dealers in good standing are vetted and credentialed for sale day participation. For example, NAAA publishes an Arbitration Policy that establishes guidelines for sellers to prepare their vehicles for wholesale and outlines the rights and responsibilities of licensed dealers who bid on vehicles. The policy acts as a roadmap in the rare instances

that a seller and buyer agree to terms but do not complete the deal and serves as a safety net when buyers identify any inconsistencies between seller representations and the actual condition of the vehicle.

The high volume and fast-paced auction environment has been fine-tuned over the years to ensure efficiency and safety in an energetic environment. At any given time, there may be thousands of vehicles on property, with a constant rotation of inventory. Thus, while we appreciate the policy behind this Proposed Rulemaking, it has the potential to disrupt the dynamics of the above-described vehicle auction space.

NAAA offers the following comments on the Proposed Rulemaking:

1. Disclosure of Material Conditions

We note that the Proposed Rulemaking renames Part V of Title 37 of the Pa. Code from “BUREAU OF CONSUMER PROTECTION” to “UNFAIR TRADE PRACTICES” without a corresponding explanation in the summary. Such a title change, in our estimation, requires our industry to analyze this chapter through a different lens. The requirements of Chapter 301 as newly-titled could potentially be interpreted to extend to all motor vehicle transactions that occur in the Commonwealth (i.e. not just retail transactions between retail dealers and consumers). While NAAA does not assume this to be the case (especially considering the underlying statutory authority), we must still seek clarity to the Proposed Rulemaking as drafted.

Vehicle auction transactions almost always involve two sophisticated commercial entities (a seller and buyer) with (1) the industry expertise to confidently transfer and secure vehicle inventory at wholesale, (2) unique business needs, (3) the resources to repair and recondition vehicles in preparation for retail sale, and (4) a deep understanding of their markets and consumer needs. While NAAA member auctions conduct industry standard pre-sale condition reports and rely on seller disclosure to list vehicles, they do not, as a course of normal practice, conduct the types of inspections of vehicles prior to their offering for sale that 301.2(5)(vii) may require as drafted. Our commercial sellers do not expect the facilitating auction to offer this type of service, and our purchasing dealers leverage their decades of industry knowledge to understand which vehicles are right for them and their clients. Implementing such a requirement on the thousands of vehicles that are received for sale each week by auctions would bring operations to a screeching halt, provide no added value to our clients, and provide no direct benefit to Pennsylvania consumers.

Further, while we appreciate that the requirements of 301.2(5.1) exempt sales to another motor vehicle dealer, we question how NAAA member auctions would comply with the requirements of 301.2(5)(vii) without conducting a similarly resource-intensive inspection of the vehicle. Therefore, the requirements of 301.2(5.1) could de facto extend to most auction wholesale transactions without (1) clarity as to the scope of the material conditions requirement in 301.2(5)(vii), and (2) a broader

exemption in 301.2(5.1) to acknowledge wholesale transactions where the purchasing entity is not a licensed dealer (for example, dismantlers).

2. Impracticality in Auction Environment.

The requirement in 301.2(5) to provide certain disclosures in writing prior to the sale is incongruous with the verbal interactions of auctioneers and bidders that are the essence of auctions.

We have similar comments regarding 301.4(9.1) and its applicability to the auction environment. Though not their primary business, vehicle auctions do occasionally conduct sales of inoperable vehicles. Such inoperability is disclosed at the time of sale, either orally or in any website listing.

Neither requirement can be implemented in the wholesale auction setting without fundamentally altering how business is conducted.

NAAA recognizes the policy behind this Proposed Rulemaking and does not believe its intent is to regulate vehicle auction activity. While these comments are specific to the changes proposed by this rulemaking, there is an overarching concern that all of the requirements of newly-titled Chapter 301 will extend to auction transactions and could additionally impact the public auctions held on behalf of the Commonwealth and the federal government that utilize NAAA member auctions for their de-fleeting needs.

NAAA suggests, for clarity, the following exemption be added to the Proposed Rulemaking to recognize the distinction between our members' transactions and those between retail dealer and consumer:

This Chapter does not apply to sales of motor vehicles by or through any auction whose primary business is the auction of vehicles on behalf of third parties.

If you have any questions, please feel free to contact me or our NAAA Legislative Program Manager, Karyn Wrye, at 615-300-6758 or kwrye@naaa.com.

Sincerely,



Paul Lips
Executive Director, National Auto Auction Association
plips@naaa.com
301-696-0400