

Supporting Statement
Proposed Amendments to the Used Motor Vehicle Trade Regulation Rule
16 C.F.R. Part 455
(OMB Control Number 3084-0108)

(1) Necessity for Collecting the Information

The Magnuson-Moss Warranty Act,¹ which became effective in 1975, directed the Federal Trade Commission (“FTC” or “Commission”) to conduct a rulemaking proceeding dealing with “warranties and warranty practices in connection with the sale of used motor vehicles.”² After notice and extensive oral hearings, the compilation of a large written record (including reports by the Presiding Officer and FTC staff), and oral presentations to the Commission from selected rulemaking participants, the Commission promulgated a final Used Car Trade Regulation Rule (“the Rule” or “Used Car Rule”). 46 Fed. Reg. 41,328 (Aug. 14, 1981).

On November 19, 1984, the Commission promulgated a revised final Used Car Rule that requires used car dealers to post a “Buyers Guide” on used cars offered for sale to consumers. The Commission amended the Used Car Rule on December 5, 1995.³ The Buyers Guide must disclose information about the warranty coverage offered, the meaning of an “as is” sale, and other related information.

As part of the Commission’s systematic review of all its regulations and Guides, the Commission initiated a review (“Regulatory Review”) of the Rule in July 2008.⁴ After reviewing the comments received during the Regulatory Review, the Commission now proposes amending the Used Car Rule further by revising the Buyers Guide.

The proposed changes include adding a statement on the face of the Buyers Guide informing consumers about the availability of vehicle history reports and suggesting that consumers obtain a copy of a vehicle history report. The Commission also proposes adding a statement, in Spanish, on the face of the English version of the Buyers Guide suggesting that consumers ask for the Buyers Guide in Spanish if they cannot read it in English. In addition, the Commission proposes to change the Buyers Guide to improve disclosure of warranties, such as manufacturers’ new car and certified used car warranties, for which the dealer is not responsible. To accomplish the improved disclosure for warranties, the Commission proposes to add boxes on the back of the Buyers Guide that dealers can check if they wish to indicate the applicability of warranties that are the responsibility of parties other than the dealer. Finally, the Commission proposes to add catalytic converters and airbags to the list of systems and defects that appears on the back of the Buyers Guide.

¹ 15 U.S.C. §§ 2301-2132.

² 15 U.S.C. § 2309(b).

³ 60 Fed. Reg. 62,195 (Dec. 5, 1995), effective Jan. 4, 1996.

⁴ 73 Fed. Reg. 42,285 (July 21, 2008) (“Regulatory Review Notice”).

(2) Use of the Information

The proposed changes in disclosures should provide consumers with additional useful information to help them make informed decisions when purchasing used cars and provide dealers with a simple way to disclose information about third-party warranty coverage that should increase the appeal of the used cars that they offer for sale.

(3) Consideration of Using Improved Technology to Reduce Burden

The disclosure provisions of the Rule permit used car dealers to use any available improved information technology to reduce their compliance burden. In fact, many used car dealers use existing office automation technology to comply with the Rule by, for example, using computer-generated Buyers Guides or using photocopied Buyers Guides. Since the Rule requires that information be disclosed to consumers by displaying Buyers Guides on the vehicles themselves, electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is inapposite and not practicable.

(4) Efforts to Identify Duplication

The Rule has been in effect since 1985. No other federal law or regulation requires that the Buyers Guide disclosures be made when a used vehicle is placed on the dealer's lot or when it is offered for sale.⁵ Two states, Maine and Wisconsin, require the disclosure of related but different information regarding used car sales.⁶

(5) Efforts to Minimize Burden on Small Organizations

Many of the approximately 53,000 franchised new and used car dealers in the United States are small businesses. The Commission sought to reduce the burden on small businesses by crafting the Rule to minimize the compliance burden upon dealers generally.⁷ The Commission concluded that the disclosures described above were the most efficient means to address the problems found in the rulemaking record. On January 4, 1996, an amendment to the Rule became effective allowing dealers to display the Buyers Guide anywhere on the vehicle if it is displayed prominently and conspicuously such that both sides are readily readable.

⁵ Some states also have adopted the Rule as state law. In addition, the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301-2312, requires that written warranties on consumer products be *available* before sale, as specified by 16 C.F.R. Part 702, but displaying warranty information is not required.

⁶ Both states were granted exemptions from the Rule pursuant to 16 C.F.R. § 455.6.

⁷ See Trade Regulation Rule Concerning Used Motor Vehicles, Statement of Basis and Purpose and Regulatory Analysis, 49 Fed. Reg. 45,692, 45,712-45,719 (Nov. 19, 1984). The Commission considered ten other remedial alternatives proposed in the cited rulemaking, such as requiring disclosure of defects, requiring a pre-sale inspection opportunity, requiring a cooling-off period for used car buyers, and requiring other disclosures concerning the condition of the used car.

60 Fed. Reg. 62,195 (Dec. 5, 1995). Before this amendment became effective, dealers were required to post the Buyers Guide on the side window of the vehicle. Finally, the proposed amendments would ease the ability of dealers to disclose to consumers additional information about the applicability of third-party warranties, information that should make the used cars offered for sale more attractive to consumers.

(6) Consequences of Conducting the Collection Less Frequently

Less frequent disclosure of the warranty and other information related to the sale of a used vehicle would undermine the purpose of the Rule. Every consumer benefits from receiving the warranty information and other information contained on the Buyers Guide. To require less frequent disclosure of this information would mean that consumers would not have the same or similar ability to make informed used car purchase decisions.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

The collection of information in the Rule is consistent with all the applicable guidelines contained in 5 C.F.R. § 1320.5(d)(2).

(8) Consultation Outside the Agency

The original rulemaking proceeding provided an opportunity for comment and input from all sectors of society affected by the proposed rule. Public hearings were held in six cities, affording additional opportunity for public participation in the proceeding. Consumer and industry groups represented affected interests during the entire proceeding. FTC staff has been in contact with interested industry members and trade association since the Rule became effective in 1985.

More recently, the Commission sought and considered public comments received during the Regulatory Review. During the review, Commission staff also informally consulted with consumers' groups, state attorneys general, industry representatives, and the Department of Justice's Bureau of Justice Assistance, which administers the National Motor Vehicle Title Identification System.

(9) Payments and Gifts to Respondents

The Rule contains no provisions for payments or gifts to respondents.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

Not applicable to the Rule's disclosure provisions. All information required to be disclosed by the Rule is public, non-proprietary, and factual. To the extent that the Commission collects information for law enforcement purposes, all trade secrets and confidential commercial information submitted to the agency are protected under the Federal Trade Commission Act, the

Freedom of Information Act, and other applicable law. See 15 U.S.C. §§ 46(f) and 57b-2; 16 C.F.R. §§ 4.10-4.11.

(12) Estimated Annual Hours and Associated Labor Cost

Incremental Annual Hours Burden of the Proposed Amendments: 57,539 hours
Incremental Associated Annual Labor Cost: \$799,800

Since the FTC's prior clearance request for the Rule, the number of used cars sold by dealers has increased to 27,618,480.⁸ FTC staff assumes that dealers will make the proposed optional disclosures on 25% of used cars offered for sale. Dealers who choose to make the optional disclosures would obtain amended Buyers Guides and complete them by checking additional boxes not appearing on the current version. Checking the added boxes should require dealers no more than an additional 30 seconds per car. Thus, making the optional disclosures presented by the proposed amendments would increase estimated burden by 57,539 hours (25% x 27,618,480 cars sold x 1/120 hour per car).

Assuming that dealers use lower level clerical staff at a mean hourly wage of \$13.90 per hour⁹ to complete the Buyers Guides, incremental labor costs associated with making the optional disclosures will total \$799,792 per year [57,539 hours x \$13.90 per hour].

(13) Estimated Annual Capital or Other Non-labor Costs

Assuming, as stated above, that dealers will make the optional disclosures on 25% of the 27,618,480 used cars offered for sale, and assuming further a cost of twenty cents per pre-printed Buyers Guide, incremental purchase costs per year will total \$1,380,924. Any other capital costs associated with the proposed amendments are likely to be minimal.

(14) Estimate of Cost to the Federal Government

The cost to the FTC for administering the proposed amendments should be minimal.

⁸ See *NIADA Used Car Industry Report (2012)* ("Used Car Industry Report 2012"), available at www.niada.com/publications.php, at 16,18 (citing CNW Marketing Research data for 2011). Dealers sold 71.2% (i.e., 27,618,480 vehicles) of the approximately 38,790,000 used cars sold in 2011. The remaining used cars were sold in casual/private party sales. *Id.* at 16.

⁹ The hourly rate derives from Bureau of Labor Statistics data for the mean hourly wage of "Office clerks, general." See *Occupational Employment and Wages - May 2011* (released March 27, 2012), available at http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.

(15) Program Changes/Adjustments

- A. Effects of Proposed Additional (Optional) Disclosures [57,539 additional hours for added disclosures and \$1,380,924 for purchases of revised Buyers Guides containing those disclosures]

The estimates for optional disclosures under the proposed amendments, applied to an updated estimate of 27,618,480 used cars sold per year, yields an estimated incremental burden of 57,539 hours. Assuming that dealers will make the optional disclosures on 25% of the 27,618,480 used cars offered for sale, and assuming further a cost of twenty cents per pre-printed Buyers Guide, this would additionally result in \$1,380,924 of incremental purchase cost per year.

- B. Effects of Adjustments (Updates) to Past Estimates [232,884 additional hours and \$617,422 in purchase costs strictly tied to a higher estimate of used cars sold]

1. Revised Estimate of the Number of Car Dealers

The estimate of the population of car dealers that order and stock Buyers Guides is updated to 52,706¹⁰ from the previously cleared estimate of 53,735. Based on the unchanged, previously cleared estimate of two hours per year to obtain Buyers Guides, that results in a decrease of 2,058 hours.

2. Revised Estimate of the Number of Used Cars Sold

The increase from the currently cleared estimate of 24,531,374 to 27,618,480 will affect the pre-existing “information collection” activities under the Rule, per year, as follows:

a. Entering Data on Buyers Guides Without Warranty (50%)

As before, FTC staff estimates that this task will require an average of two minutes per Buyers Guide.

(13,809,240 - 12,265,687 vehicles) x 2 minutes per vehicle = 51,452 additional hours;
(13,809,240 - 12,265,687 vehicles) x twenty cents per Buyers Guide = \$308,711
incremental purchase cost

¹⁰ Industry data indicates a population of 37,061 independent used car dealers in 2010. In 2010, the average number of franchised new car dealers was 15,645. Calculated from the monthly number of new dealers listed in *2011 Data Source Book* (annual unit sales per dealer) and *RITA, Bur. of Transp. Statistics, U.S. Dep’t of Transp., Table 1-17: New and Used Passenger Car Sales and Leases*, http://www.bts.gov/publications/national_transportation_statistics/html/table_01_17.html (average sales price of a used car), at 10. Combined, these estimates total 52,706 dealers that sell used cars.

b. Entering Data on Buyers Guides With Warranty (50%)

As before, FTC staff estimates that this task will require an average of three minutes per Buyers Guide.

$(13,809,240 - 12,265,687 \text{ vehicles}) \times 3 \text{ minutes per vehicle} = 77,178 \text{ additional hours};$
 $(13,809,240 - 12,265,687 \text{ vehicles}) \times \text{twenty cents per Buyers Guide} = \$308,711$
incremental purchase cost

c. Displaying Buyers Guides on Vehicles

As before, FTC staff estimates that dealers will spend an average of 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle.

$(27,618,480 - 24,531,374 \text{ vehicles}) \times 1.75 \text{ minutes per vehicle} = 90,041 \text{ additional hours}$

d. Revising Buyers Guides as Necessary

As before, staff assumes that the Buyers Guide will be revised in no more than two percent of sales, with an average time of two minutes per revision.

$(27,618,480 - 24,531,374 \text{ vehicles}) \times .02 \times 2 \text{ minutes per revision} = 2,058 \text{ additional hours}$

e. Spanish Language Sales

(i) Data Entry on Buyers Guides for Used Cars Without Warranty (50%)

As before, FTC staff estimates that this task will require an average of two minutes per Buyers Guide. Based on data that suggests that approximately 6.5 percent of the United States population speaks Spanish at home, without also speaking fluent English,¹¹ staff retains its assumption that approximately 6.5 percent of used car sales will be conducted in Spanish.

$(13,809,210 - 12,265,687 \text{ vehicles}) \times .065 \times 2 \text{ minutes per vehicle} = 3,344$
additional hours

¹¹ U.S. Census Bureau, Table S1601. Language Spoken at Home. 2008 American Community Survey 1-Year Estimates, available at:

http://factfinder.census.gov/servlet/STTable?_bm=y&-qr_name=ACS_2008_1YR_G00_S1601&-geo_id=01000US&-ds_name=ACS_2008_1YR_G00_&-_lang=en&-redoLog=false&-CONTEXT=st. The table indicates that 12.2% of the United States population 5 years or older speaks Spanish or Spanish Creole in the home and 46.7% of these in-home Spanish speakers speak English less than “very well.”

(ii) Data Entry on Buyers Guides for Used Cars With Warranty (50%)

(13,809,210 - 12,265,687 vehicles) x .065 x 3 minutes per vehicle = 5,016 additional hours

(iii) Displaying Buyers Guides on Used Cars

As stated above, FTC staff estimates that dealers will spend an average of 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle.

(27,618,480 - 24,531,374 vehicles) x .065 x 1.75 minutes per vehicle = 5,853 additional hours

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.

