

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

(1) Circumstances Making the Collection of the Information Necessary

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.

The Commission based its decision to adopt a revised version of the Rule on its finding that the purchase of a used car represents a substantial, necessary investment in a reliable means of transportation. The Commission concluded that:

Despite the significance of this investment and the relative unfamiliarity of most consumers with the mechanical operation of an automobile, used car buyers currently receive little accurate warranty and mechanical condition information to assist them in their purchase. Consumers’ ability to obtain this information has been hampered by various unfair and deceptive practices identified during the course of [the] rulemaking proceeding; as the record established, these practices have resulted in substantial consumer injury in the used car market.⁴

The Commission found that the rulemaking record demonstrated that used car dealers and their agents frequently engaged in deceptive sales practices including: (1) misrepresenting the mechanical condition of a used vehicle; (2) misrepresenting the terms of any warranty offered; and (3) representing that a used vehicle is sold with a warranty when the vehicle is sold without one. The Commission also found that used car dealers and their agents engaged in unfair practices including: (1) failing to disclose, before sale, that the used vehicle is sold without any warranty; and

¹ 15 U.S.C. §§ 2301 - 2132.

² 15 U.S.C. § 2309(b).

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

⁴ Statement of Basis and Purpose (“SBP”), 49 Fed. Reg. 45,692 (Nov. 19, 1984).

(2) failing to make available, before sale, the terms of any written warranty offered in connection with the sale of the used vehicle.⁵ The Commission determined that requiring point-of-sale disclosure of information about warranty coverage would discourage used car dealers from engaging in the deceptive practices established in the rulemaking record.

(2) Use of the Information

The Used Car Rule requires dealers to display a one page, two-sided Buyers Guide. The Buyers Guide must contain three verbatim disclosures specified by the Rule. Because the Rule explicitly sets forth each of these disclosures (and the format for disclosure of other required information), the requirement constitutes “the public disclosure of information originally supplied by the federal government to the recipient for the purpose of disclosure to the public.” Thus, these disclosures are not “collection[s] of information” for Paperwork Reduction Act purposes. See 5 C.F.R. § 1320.3(c)(2).

In addition to the above-referenced disclosures, used car dealers must supply certain identifying information, including the dealer’s name and address (16 C.F.R. § 455.2(c)), the make, model, model year, and vehicle identification number for the vehicle (16 C.F.R. § 455.2(d)), and the name and telephone number of the person who should be contacted if complaints arise after sale (16 C.F.R. § 455.2(e)), as well as supply information about warranties. Dealers may either check a box on the Buyers Guide to indicate that a used vehicle is sold “as is” or provide specific information about the warranty offered. This information must include the warranty terms, including whether the warranty offered is “full” or “limited,” which systems are covered, the warranty’s duration, and the percentage of the repair cost the dealer will pay. If the vehicle is still under the manufacturer’s warranty, the dealer may so state. If the dealer offers a service contract on the vehicle, this information must also be disclosed by marking the proper box on the Buyers Guide.

The Buyers Guide must be displayed on the vehicle for review by prospective customers. It may be placed anywhere on the vehicle as long as it is displayed prominently and conspicuously so that both sides are readily readable. 16 C.F.R. § 455.2(a)(1). The dealer must give the buyer of a used vehicle a completed Buyers Guide reflecting the warranty coverage agreed upon. An accurate copy of the original form may be substituted if the dealer wishes. 16 C.F.R. § 455.3(a).

Finally, the information contained on the final version of the Buyers Guide must be incorporated into the contract of sale for each used vehicle. The Rule requires that dealers inform the customer of this fact by including a verbatim statement in each contract of sale. 16 C.F.R. § 455.3(b). This latter provision is also not a “collection of information” under 5 C.F.R. § 1320.3(c)(2).

Prospective purchasers use the information provided by the Buyers Guide to evaluate whether a warranty is offered and, if so, its terms. Each Buyers Guide is specific to the particular used vehicle to which it is attached. This provides a basis for consumers to compare various

⁵ SBP at 45,692.

vehicles and negotiate warranty coverage. This information also may be used to assess the condition of the vehicle. In addition, the posting of Buyers Guides and the mandatory disclosures contained thereon allow for possible “spot-check” by FTC officials and state law enforcement agencies.

(3) Consideration of the Use of Information 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.⁶ Two states, Maine and Wisconsin, require the disclosure of related but different information regarding used car sales.⁷

(5) Efforts to Minimize Burden on Small Organizations

Many of the approximately 54,000 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.⁸ 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. 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.

⁶ 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.

⁷ Both states were granted exemptions from the Rule pursuant to 16 C.F.R. § 455.6.

⁸ See SBP at 45,712 - 45,719. The Commission considered ten other remedial alternatives proposed in the Used Car 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.

(6) Consequences of Collecting the Information 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, as required by 5 C.F.R. § 1320.8(d)(1), the FTC sought public comments on its proposal to extend its current OMB clearance for the Rule's information collection requirements. *See* 75 Fed. Reg. 62,538 (Oct. 12, 2010). No comments were received. Pursuant to the OMB's implementing regulations, the FTC is providing a second opportunity for public comment while seeking OMB approval to extend the existing PRA clearance for the Rule.

(9) Payments or Gifts to Respondents

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

(10) & (11) 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 Sections 6(f) and 21 of the Federal Trade Commission Act, 15 U.S.C. §§ 46(f) and 57b-2; 16 C.F.R. §§ 4.10-4.11.

(12) Estimated Annual Hours and Labor Cost Burden

Estimated total annual hours burden: 1,974,589 hours

The Rule has no recordkeeping requirements. The estimated burden relating solely to disclosure requirements is 1,974,589 hours. As explained in more detail below, this estimate is based on the number of used car dealers (53,735⁹), the number of used cars sold by dealers annually (approximately 24,531,374¹⁰), and the time needed to fulfill the information collection tasks required by the Rule.¹¹

The Rule requires that used car dealers display a one-page, double-sided Buyers Guide on each used car that they offer for sale. The component tasks associated with the Rule's required display of Buyers Guides include: (1) ordering and stocking Buyers Guides; (2) entering data on Buyers Guides; (3) displaying the Buyers Guides on vehicles; (4) revising Buyers Guides as necessary; and (5) complying with the Rule's requirements for sales conducted in Spanish.

1. *Ordering and Stocking Buyers Guides:* Dealers should need no more than an average of two hours per year to obtain Buyers Guides, which are readily available from many commercial printers or can be produced by an office word-processing or desk-top publishing system.¹² Based on a population of 53,735 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 107,470 hours.

2. *Entering Data on Buyers Guides:* The amount of time required to enter applicable data on Buyers Guides may vary substantially, depending on whether a dealer has automated the process. For used cars sold "as is," copying vehicle-specific data from dealer inventories to Buyers Guides and checking the "No Warranty" box may take two to three minutes per vehicle if done by hand, and only seconds for those dealers who have automated the process or use pre-printed forms. Staff estimates that this task will require an average of two minutes per Buyers Guide. Similarly,

⁹ CNW Marketing Research, Inc. As of July 2010, CNW lists 15,631 new vehicle franchised outlets with used car operations and 38,104 independent used car outlets, for a total of 53,735 used car dealers.

¹⁰ *Id.* This figure reflects total used car sales by franchised and independent dealers in 2009, the most recent complete annual figures available.

¹¹ Some dealers opt to contract with outside contractors to perform the various tasks associated with complying with the Rule. Staff assumes that outside contractors would require about the same amount of time and incur similar cost as dealers to perform these tasks. Accordingly, the hour and cost burden totals shown, while referring to "dealers," incorporate the time and cost borne by outside companies in performing the tasks associated with the Rule. In addition, the time estimates that follow repeat those that the FTC published in the 2007 PRA clearance renewal-related *Federal Register* notices (72 FR 46487 (Aug. 20, 2007); 72 FR 71911 71912 (Dec. 19, 2007)) without receiving public comment. Absent prospective specific industry estimates to the contrary, staff will continue to apply these estimates, which staff believes are reasonable.

¹² Buyers Guides are also available online from the FTC's Web site, www.ftc.gov, as links to *A Dealer's Guide to the Used Car Rule* at <http://www.ftc.gov/bcp/edu/pubs/business/autos/bus13.shtm>.

for used cars sold under warranty, the time required to check the “Warranty” box and to add warranty information, such as the additional information required in the Percentage of Labor/Parts and the Systems Covered/Duration sections of the Buyers Guide, will depend on whether the dealer uses a manual or automated process or Buyers Guides that are pre-printed with the dealer’s standard warranty terms. Staff estimates that these tasks will take an average of one additional minute, *i.e.*, cumulatively, an average total time of three minutes for each used car sold under warranty.

Staff estimates that approximately fifty percent of used cars sold by dealers are sold “as is,” with the other half sold under warranty. Therefore, staff estimates that the overall time required to enter data on Buyers Guides consists of 408,856 hours for used cars sold without a warranty (24,531,374 vehicles x 50% x 2 minutes per vehicle) and 613,284 hours for used cars sold under warranty (24,531,374 vehicles x 50% x 3 minutes per vehicle) for a cumulative estimated total of 1,022,140 hours.

3. *Displaying Buyers Guides on Vehicles:* Although the time required to display the Buyers Guides on each used car may vary substantially, 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. The estimated burden associated with this task is approximately 715,498 hours for the 24,531,374 vehicles sold in 2009 (24,531,374 vehicles x 1.75 minutes per vehicle).

4. *Revising Buyers Guides as Necessary:* If negotiations between the buyer and seller over warranty coverage produce a sale on terms other than those originally entered on the Buyers Guide, the dealer must revise the Buyers Guide to reflect the actual terms of sale. According to the original rulemaking record, bargaining over warranty coverage rarely occurs. Staff notes that consumers often do not need to negotiate over warranty coverage because they can find vehicles that are offered with the desired warranty coverage online or in other ways before ever contacting a dealer. Accordingly, 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. Therefore, staff estimates that dealers annually will spend approximately 16,354 hours revising Buyers Guides (24,531,374 vehicles x 2% x 2 minutes per vehicle).

5. *Spanish Language Sales:* The Rule requires that contract disclosures be made in Spanish if a sale is conducted in Spanish.¹³ The Rule permits displaying both an English and a Spanish language Buyers Guide to comply with this requirement.¹⁴ Many dealers with large numbers of Spanish-speaking customers likely will post both English and Spanish Buyers Guides to avoid potential compliance violations.

Calculations from United States Census Bureau surveys indicate that approximately 6.5 percent of the United States population speaks Spanish at home, without also speaking fluent

¹³ 16 CFR 455.5.

¹⁴ *Id.*

English.¹⁵ Staff therefore projects that approximately 6.5 percent of used car sales will be conducted in Spanish. Dealers will incur the additional burden of completing and displaying a second Buyers Guide in 6.5 percent of sales assuming that dealers choose to comply with the Rule by posting both English and Spanish Buyers Guides. The annual hours burden associated with completing and posting Buyers Guides is 1,737,638 hours (1,022,140 hours for entering data on Buyers Guides plus 715,498 hours for displaying Buyers Guides). Therefore, staff estimates that the additional burden caused by the Rule's requirement that dealers display Spanish language Buyers Guides when conducting sales in Spanish is 112,947 hours (1,737,638 hours x 6.5%). The other components of the annual hours burden, *i.e.*, purchasing Buyers Guides and revising them for changes in warranty coverage, remain unchanged.

Estimated annual cost burden: \$26,301,525

Labor costs are derived by applying appropriate hourly cost figures to the burden hours described above. Staff has determined that all of the tasks associated with ordering forms, entering data on Buyers Guides, posting Buyers Guides on vehicles, and revising them as needed, including the corresponding tasks associated with Spanish Buyers Guides, are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of \$13.32 per hour¹⁶ and an estimated burden of 1,974,589 hours for disclosure requirements, the total labor cost burden would be approximately \$26,301,525.

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

Although the cost of Buyers Guides can vary considerably, based on industry input staff estimates that the average cost of each Buyers Guide is twenty cents. The estimated cost of Buyers Guides for the 24,531,374 used cars sold by dealers in 2009 is approximately \$4,906,275. In making this estimate, staff conservatively assumes that all dealers will purchase preprinted forms instead of producing them internally, although dealers may produce them at minimal expense using current office automation technology. Capital and start-up costs associated with the Rule are minimal.

(14) Estimate of Cost to the Federal Government

Staff estimates that the annualized cost to the federal government attributable to enforcement of the Used Car Rule will be approximately \$275,000, inclusive of benefits. This estimate is based

¹⁵ 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."

¹⁶ The hourly rate is based on Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general. Occupational Employment and Wages, May 2009, available at <http://www.bls.gov/oes/current/oes439061.htm#nat>.

upon the assignment of two work years (including clerical and other support) to the Rule during the fiscal year, as well as an estimated \$9,000 in other operating expenses required to support the Rule.

(15) Program Changes or Adjustments

There are no program changes. The estimated total annual hours burden has decreased from 2,250,000 hours in 2007 to the current estimate of 1,974,589 hours due to a decrease in the number of used car dealers and number of cars sold.

(16) Publication of Information

Not applicable.

(17) Requested Permission Not to Display OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.