

Federal Trade Commission
Supporting Statement for Supplemental 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 Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”) requires dealers to display on used cars offered for sale a window sticker called a “Buyers Guide” containing warranty and other information. On December 4, 2012, the Federal Trade Commission (“FTC” or “Commission”) submitted to OMB a clearance request regarding the Commission’s Notice of Proposed Rulemaking (“NPRM”) that proposed changes to the Rule.¹ On January 3, 2013, OMB filed comment on that request stating that the Commission should consider the public comments received and provide a response to them and any necessary adjustments in the agency’s next submission to OMB.

Based on its review of the public comments on the NPRM, the Commission proposes further amendments to promote consumer access to vehicle history information, to clarify the meaning of “as is” in the sale of used vehicles without warranties, and to make disclosures concerning non-dealer warranties more prominent. The additional proposed amendments appear in the FTC’s Supplemental Notice of Proposed Rulemaking (“SNPRM”).

No final amendments are being adopted at this time. Rather, the Commission and agency staff continue to consider comments submitted in response to the NPRM and additionally seek comments on the related SNPRM. The SNPRM proposes a revised approach that – in addition to the used car dealer statement originally proposed in the NPRM – would require dealers that have vehicle history reports to indicate that fact on the Buyers Guide and to make the reports available to consumers upon request.

(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 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.

¹ ICR Reference No. 201206-3084-002. The Commission announced the rulemaking on December 4, 2012. The NPRM published in the *Federal Register* on December 17, 2012. 77 Fed. Reg. 74,746.

(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.² Two states, Maine and Wisconsin, require the disclosure of related but different information regarding used car sales.³

(5) Efforts to Minimize Burden on Small Organizations

Many of the approximately 55,000 used car dealers in the United States are small businesses. The Commission has sought to reduce the burden on small businesses by crafting the Rule to minimize the compliance burden upon dealers generally.

(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

In response to the NPRM, the Commission received nearly 150 comments.⁴ After reviewing the comments, the Commission now proposes in its SNPRM additional modifications to the proposal made in the NPRM to address concerns raised by commenters. The Commission also seeks comments on alternative proposals and issues that commenters have submitted or identified.

(9) Payments and Gifts to Respondents

Not applicable.

² 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.

³ Both states were granted exemptions from the Rule pursuant to 16 C.F.R. § 455.6.

⁴ The comments are available at: <http://www.ftc.gov/os/comments/usedcarrulenprm/index.shtm>.

(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 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

The proposed amendments would increase the burden on those dealers who have obtained vehicle history reports because the amendments would require those dealers to disclose on the Buyers Guide that they have the reports and to provide copies of them to consumers upon request. This requirement would place no additional burden on dealers who do not have vehicle history reports. The proposed change to the Buyers Guide's description of "as is" sales would not impose any additional burden on dealers other than the initial burden of purchasing replacement Buyers Guides. As discussed in the NPRM, the proposed amendments would increase the burden on those dealers who choose to disclose non-dealer warranties, but not on those dealers who do not make the optional disclosures.⁵ The proposed amendments would change the burden estimates because the burden imposed on some dealers will increase. Burden estimates for the proposed modification appear below.

Estimated Additional Annual Hours Burden

A. Number of Respondents

The proposed amendments to the Rule would affect all 55,432 used vehicle dealers⁶ in the United States. Dealers who have vehicle history reports would be required to check a box on the Buyers Guide and to provide copies of the reports to requesting consumers. Although the proposed amendments to the Rule would not require dealers who do not have vehicle history reports to make additional Buyers Guide disclosures, the proposed amendments would continue to require all dealers to obtain and to use replacement Buyers Guides.

B. Recordkeeping Hours

The proposed amendments to the Rule will not impose incremental recordkeeping requirements on dealers.

⁵ 77 Fed. Reg. at 74,764-74,765.

⁶ 37,892 independent dealers in 2012. *NIADA Used Car Industry Report* (2013), at 16. 17,540 franchised new car dealers in 2012. *NADA Data State-of-the Industry Report 2013*, at 5.

C. Disclosure Hours

Under the existing OMB clearance for the Rule, FTC staff estimated the total annual hours burden to be 2,296,226 hours,⁷ based on the number of used car dealers (55,432), the number of used cars sold by dealers annually (28,958,000), and the time needed to fulfill the information collection tasks required by the Rule.⁸

Industry sources, and anecdotal evidence,⁹ indicate that most dealers use vehicle history reports and that dealer use of vehicle history reports is becoming increasingly commonplace. Staff is unaware of any reliable data concerning how often dealers obtain vehicle history reports, but, for simplicity, projects that 50% or more of dealers, nationwide, obtain the reports. In turn, staff projects that the proposed Rule would require dealers to check an additional box on the Buyers Guide and to make the reports available in at least 50% of used car sales nationwide.

The proposed Rule, however, would affect California, the state with the largest number of used car sales in the United States, differently. California requires dealers to obtain NMVTIS reports and to make those reports available to consumers when the reports contain a branded title or junk, salvage, or insurance information. Therefore, the proposed amendments to the Rule effectively would require all California used vehicle dealers to check the additional Buyers Guide box and make a vehicle history report available even when a NMVTIS report would not trigger the disclosures required by California. Although staff is unaware of reliable data concerning California's share of nationwide used car sales, California accounts for approximately 11% of vehicle registrations in the United States.¹⁰ Using vehicle registrations as a proxy for sales, staff projects that California accounts for approximately 11% of nationwide used cars sales. Assuming that California used car dealers fully comply with their state law and the amendments proposed by the SNPRM, they will make the additional vehicle history disclosures in the projected 11% of nationwide sales, *i.e.*, 3,185,380 (11% x 28,958,000) used car sales.

Based on vehicle registrations as a proxy for used car sales, 89% of all used car sales occur outside of California, *i.e.*, 25,772,620 used car sales (89% of 28,958,000 nationwide used car sales). Assuming that dealers obtain vehicle history reports and, in turn, make the requisite vehicle history disclosures under the proposed Rule (*i.e.*, check the added box on the Buyers Guide, issue the vehicle history report to the consumer), dealers outside of California will make the required disclosures for 12,886,310 used car sales (50% of 25,772,620 used cars).

⁷ The published total of 2,296,227 hours in the FTC's most recent pursuit of OMB clearance regarding the existing version of the Rule, 78 Fed. Reg. 59,032, at 59,033 (Sept. 25, 2013), was due to rounding error. The OMB cleared estimate reflects truer rounding.

⁸ 78 Fed. Reg. 59,032 n.2, *citing NIADA Used Car Industry Report* (2013), 16-17. The number of used cars sold by dealers in 2012 was calculated by multiplying the percentage of total used car sales conducted by dealers (71.5%) by the total number of used cars sold in 2012 (40.5 million).

⁹ Staff notes that vendors of vehicle history reports advertise extensively in dealer trade publications.

¹⁰ See <http://hedgescompany.com/automotive-market-research-statistics/auto-mailing-lists-and-marketing>.

Thus, staff estimates that dealers will make the required vehicle history disclosures for 16,071,690 used car sales. At an estimated thirty seconds to retrieve a report, this amounts to 133,931 additional disclosure hours, cumulatively¹¹ (16,071,690 used cars x 1/120 hour).

Like the NPRM, the SNPRM provides for optional disclosures concerning non-dealer warranties. In the NPRM, staff estimated that dealers would make these optional disclosures in 25% of used car sales.¹² Staff also estimated that dealers would need no more than an additional thirty seconds to make these optional disclosures.¹³ Therefore, the additional aggregate burden on dealers who choose to make the optional non-dealer warranty disclosures is 60,329 hours (25% x 28,958,000 used car sales x 1/120 hour).

In sum, the proposed amendments in the SNPRM, including those retained from the NPRM, would increase the estimated annual burden by 194,260 hours: [(100% of 3,185,380 California used car sales x 1/120 hour per vehicle to make vehicle history disclosures) + (50% of 25,772,620 remaining used car sales x 1/120 hour per vehicle to make vehicle history disclosures) + (25% x 28,958,000 used car sales x 1/120 hour per vehicle to make optional non-dealer warranty disclosures)].

D. Reporting Hours

The proposed amendments to the Rule will not impose incremental reporting requirements.

E. Labor Costs

(1) Recordkeeping

None.

(2) Disclosure

The estimated annual incremental cost of the proposed amendments to the Rule is \$2,801,229. That figure is the product of estimated burden hours (194,260) multiplied by an hourly labor rate of \$14.42¹⁴ for clerical or administrative staff.

(3) Reporting

None.

¹¹ Staff projects that the incremental time to check the vehicle history box would be de minimis.

¹² 77 FR at 74764-74765.

¹³ 77 FR at 74765.

¹⁴ <http://www.bls.gov/news.release/ocwage.nr0.htm>. Bureau of Labor Statistics, Economic News Release, April 1, 2014, Table 1, "National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2013." The hourly rate drawn from this source is for "[o]ffice clerks, general."

F. Non-Labor/Capital Costs

The FTC anticipates making amended Buyers Guides available on its website for downloading by dealers. The FTC expects that current suppliers of Buyers Guides, such as commercial vendors and dealer trade associations, will supply dealers with amended Buyers Guides. Accordingly, dealers' cost to obtain amended Buyers Guides should increase only marginally, if at all.

The proposed Rule would require dealers who already have vehicle history reports to make copies of those reports available to consumers upon request. The proposed Rule does not require dealers to obtain the reports. The only additional cost that dealers will incur because of the proposed Rule is the cost of making copies for consumers who request them. Vehicle history reports are typically no more than a few pages in length. Staff anticipates that dealers can make copies of the reports using ordinary office equipment that they already possess and that the incremental cost of additional paper, ink, etc., for copies will be minimal. In addition, this SNPRM asks for public comment on whether these costs, however minimal, could be reduced further by permitting dealers to provide consumers with electronic access to the reports.

(14) Estimate of Cost to Federal Government

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

(15) Program Changes/Adjustments

The proposed estimates herein use as their base the same estimated number of used vehicles (28,958,000) as that used in the FTC's most recently cleared estimates for the current Rule.¹⁵ [This contrasts with the prior estimated number, 27,618,480, used for the 2012 NPRM and based on industry data available then.]

This document and the associated SNPRM, however, account newly for disclosures regarding vehicle history reports that arise from the supplemental proposed amendments, as analyzed in (12) above. Additionally, as also discussed in (12) above, the SNPRM and this document, like the NPRM, provide for optional disclosures regarding non-dealer warranties.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

¹⁵ ICR Reference No: 201312-3084-003 (concluded January 24, 2014) ("Extension without change of a currently approved collection").

(18) **Exceptions to Certification**

Not applicable.