

Federal Trade Commission
Supporting Statement for 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 The Commission promulgated a final Used Car Trade Regulation Rule (“the Rule” or “Used Car Rule”). 46 Fed. Reg. 41,328 (Aug. 14, 1981).

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. 49 FR 45,692 (Nov. 19, 1984). The Commission amended the Used Car Rule on December 5, 1995, to require that the Buyers Guide disclose information about the warranty coverage offered, the meaning of an “as is” sale, and other related information. 60 Fed. Reg. 62,195 (Dec. 5, 1995). In 2016, the Commission further amended the Rule to revise the Buyers Guide to allow dealers to provide optional disclosures concerning non-dealer warranties. 81 Fed. Reg. 81,664 (Nov. 18, 2016).

The Used Car Rule requires dealers to display on used cars offered for sale a window sticker called a “Buyers Guide” containing warranty and other information. One of the principal goals of the Used Car Rule is to prevent oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage. To accomplish that goal, the Rule provides a uniform method for disclosing warranty information on the “Buyers Guide.” The Rule requires used car dealers to disclose on the Buyers Guide whether they are offering a used car for sale with a dealer’s warranty and, if so, the basic terms, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty.

The Rule additionally provides that the Buyers Guide disclosures are to be incorporated by reference into the sales contract, and are to govern in the event of an inconsistency between the Buyers Guide and the sales contract. The Rule requires Spanish language versions of the Buyers Guide when dealers conduct sales in Spanish. The Rule also requires other disclosures that must be printed directly on the Buyers Guide, including: a suggestion that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises that are not confirmed in writing; and a list of fourteen major systems of a used motor vehicle and the major defects that may occur in these systems (“List of Systems”).

(2) Use of the Information

¹ 15 U.S.C. §§ 2301 - 2132.

² 15 U.S.C. § 2309(b).

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).

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 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 to Use Improved 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.³ Two states, Maine and Wisconsin, require the disclosure of related but different information regarding used car sales.⁴

(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.⁵ 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) 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

³ 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.

⁴ Both states were granted exemptions from the Rule pursuant to 16 C.F.R. § 455.6.

⁵ 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.

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* 84 FR 38979 (Aug. 8, 2019) No relevant 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 and Gifts to Respondents

No payments or gifts are provided 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* 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

Annual hours burden: 2,368,993 hours

As explained in more detail below, this estimate is based on the number of used car dealers (53,779⁶), the number of used cars sold by dealers annually (approximately 29,214,371⁷), and the time needed to fulfill the information collection tasks required by the Rule.¹²

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.⁸ Based on an estimated population of 53,779 dealers, the annual hours burden for producing or obtaining and stocking Buyers Guides is 107,558 hours.

2. *Entering Data on Buyers Guides:* The amount of time required to enter

⁶ 37,026 independent dealers. *NIADA Used Car Industry Report* (2014), at 16. 16,753 franchised new car dealers in 2018. *NADA Data 2018: Annual Report*, at 5.

⁷ The estimated number of used car sold annually is based on records for calendar year 2017 from the NIADA. *NIADA Used Car Industry Report* (2018), at 22.

⁸ Buyers Guides are also available online from the FTC's Web site, www.ftc.gov, at <http://business.ftc.gov/selected-industries/automobiles>.

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 dealers will require an average of two minutes per Buyers Guide to complete this task. Similarly, 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 dealers sell approximately fifty percent of used cars “as is” and the other half under warranty. Therefore, staff estimates that the overall time required to enter data on Buyers Guides consists of 486,906 hours for used cars sold without a warranty (29,214,371 vehicles \times 50% \times 2 minutes per vehicle) and 730,359 hours for used cars sold under warranty (29,214,371 vehicles \times 50% \times 3 minutes per vehicle) for a cumulative estimated total of 1,217,265 hours.

3. *Displaying Buyers Guides on Vehicles:* Although the time required to display the Buyers Guides on each used car may vary, 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 852,086 hours for the estimated 29,214,371 vehicles sold annually (29,214,371 vehicles \times 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 dealers will revise the Buyers Guide 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 19,476 hours revising Buyers Guides (29,214,371 vehicles \times 2% \times 2 minutes per vehicle).

5. *Spanish Language Sales:* The Rule requires dealers to make contract disclosures in Spanish if the dealer conducts a sale in Spanish.⁹ The Rule permits displaying both an English and a Spanish language Buyers Guide to comply with this requirement.¹⁰ 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 5.4

⁹ 16 CFR 455.5.

¹⁰ *Id.*

percent of the United States population speaks Spanish at home, without also speaking fluent English.¹¹ Staff therefore projects that dealers will conduct approximately 5.4 percent of used car sales in Spanish. Dealers will incur the additional burden of completing and displaying a second Buyers Guide in 5.4 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 displaying Buyers Guides is 2,069,351 hours (1,217,265 hours for entering data on Buyers Guides + 852,086 hours for displaying Buyers Guides). Therefore, staff estimates that the burden associated with the Rule's requirement that dealers display Spanish language Buyers Guides when conducting sales in Spanish is 111,745 hours (2,069,351 hours × 5.4% of sales).¹²

6. *Optional Disclosures of Non-Dealer Warranties:* The Rule does not require dealers to disclose information about non-dealer warranties, but provides dealers with the options to disclose such warranties on Buyers Guides. FTC staff has estimated that dealers will make the optional disclosures on 25% of used cars offered for sale. Staff believes that checking the optional boxes to disclose a non-dealer warranty should require dealers no more than 30 seconds per vehicle. Accordingly, based on 29,214,371 used cars sold, staff estimates that making the optional disclosures entails a burden of 60,863 hours (25% × 29,214,371 vehicles sold × 1/120 hour per vehicle).

Annual labor cost: \$40,083,362

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 and providing optional disclosures about non-dealer warranties, are typically done by clerical or low-level administrative personnel. Using a clerical cost rate of \$16.92 per hour¹³ and an estimated burden of 2,368,993 hours for disclosure requirements, the total labor cost burden is \$40,083,362 (\$16.92 per hour × 2,368,993 hours).

(13) Estimate of Capital or Other Non-Labor Costs

Although the cost of Buyers Guides may vary, staff estimates that the average cost of each Buyers Guide is thirty cents based on industry input. Therefore, the estimated cost of Buyers

¹¹ U.S. Census Bureau, TableB16001. *Language Spoken at Home. 2017 American Community Survey 1-Year Estimates*, available at:

https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_B16001&prodType=table (last visited June 7, 2019) (5.4% of the United States population 5 years or older who speaks Spanish or Spanish Creole in the home speaks English less than “very well.”).

¹² The calculations entered in ROCIS reflect the following details: (1) Spanish language sales: data entry on Buyers Guides for used cars without warranty (26,293 hours) (29,214,371 vehicles × 50% × 5.4% × 2 minutes); (2) Spanish language sales: data entry on Buyers Guides for used cars with warranty (39,439 hours) (29,214,371 vehicles × 50% × 5.4 × 3 minutes); and (3) Spanish language sales: displaying Buyers Guides on used cars (46,013 hours) (29,214,371 vehicles × 5.4% × 1.75 minutes). These subtotals add up to 111,745 hours.

¹³ The hourly rate is based on the Bureau of Labor Statistics estimate of the mean hourly wage for office clerks, general. *Occupational Employment and Wages, May 2018, 43-9061 Office Clerks, General*, available at: <https://www.bls.gov/oes/current/oes439061.htm#nat>.

Guides for the 29,214,371 used cars sold by dealers in 2017 is approximately \$8,764,311. In making this estimate, staff assumes that all dealers will purchase pre-printed forms instead of producing them internally, although dealers may produce them at lower expense using their own office automation technology. Capital and start-up costs associated with the Rule are minimal.

(14) Estimate of Cost to Federal Government

Staff estimates that the annualized cost to the federal government attributable to enforcement of the Used Car Rule will be approximately \$353,076, inclusive of benefits. This estimate is based 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/Adjustments

There are no program changes. The estimated number of dealers has decreased from the previously cleared estimate of 55,432 to 53,779, and the estimated number of used cars sold annually have increased from 28,958,000 to 29,214,371. Together, these have generated revised estimates for burden hours, labor costs, and non-labor costs.

(16) Plans for Tabulation and Publication

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.