

**Supplemental Supporting Statement for Information Collection Provisions of
the newly promulgated Combating Auto Retail Scams Trade Regulation
Rule, 16 C.F.R. Part 463
(OMB Control # 3084-0172)**

On July 13, 2022, the Federal Trade Commission (“FTC” or “Commission”) submitted a Notice of Proposed Rulemaking (“NPRM”)¹ and an accompanying Supporting Statement to the Office of Management and Budget (“OMB”) for review under the Paperwork Reduction Act (“PRA”).² On July 29, 2022, OMB directed the Commission to resubmit its request when the proposed rule was finalized. The Commission is now submitting the newly promulgated Rule and a Supplemental Supporting Statement to OMB.

The Commission requests approval for the disclosure and recordkeeping requirements of the newly promulgated Combating Auto Retail Scams Trade Regulation Rule (“CARS Rule” or “Rule”), 16 C.F.R. Part 463. The disclosure and recordkeeping requirements of the Rule constitute “collection[s] of information” for purposes of the Paperwork Reduction Act.³

(1) & (2) Necessity for and Use of the Information Collected

The Rule is promulgated pursuant to the Commission’s authority under the Dodd-Frank Act, 12 U.S.C. § 5519, which authorizes the FTC to prescribe rules governing motor vehicle dealers, and to do so under the FTC Act and in accordance with the Administrative Procedure Act. The Rule focuses on two consumer protection problems that have persisted despite enforcement, outreach and engagement with industry, and other action: (1) bait-and-switch tactics and (2) hidden charges for add-on products or services (such as extended warranties or vehicle undercoating) and other items. These problems cost consumers millions of hours of lost time in what is already a lengthy and arduous process, and to spend billions of dollars more each year on what already are among the largest purchases of their lifetimes. They also harm law-abiding dealers, which lose business to dealerships that bait consumers with low prices and then—after consumers have spent hours, for example, selecting a dealer, traveling to the lot, and negotiating on the lot—charge more than advertised, including by hiding significant charges in dense paperwork.

To address these consumer protection problems, the CARS Rule (1) prohibits covered dealers from making misrepresentations regarding material information about, *inter alia*, the cost of covered vehicles, the financing terms, and the availability of rebates or discounts; (2) requires dealers to disclose in certain circumstances the offering price of the vehicle—its full cash price, with only required government charges allowed to be excluded; that optional add-ons are not required to purchase or lease the vehicle; and total of payments information, when representing monthly payment information; (3) prohibits dealers from charging for add-on products or

¹ 87 Fed. Reg. 42,012 (July 13, 2022).

² OMB assigned the rulemaking control number 3084-0172 for PRA review purposes.

³ 44 U.S.C. § 3502(3); 5 C.F.R. 1320.3(c).

services that provide no benefit to the consumer; and (4) requires dealers to obtain express, informed consent from a consumer for charges for any item.

(a) Disclosures

Section 463.4(a) of the Rule requires dealers to clearly and conspicuously disclose a vehicle's offering price⁴ in advertisements and other communications that reference a specific vehicle, or any monetary amount or financing term for any vehicle. Section 463.4(a)(3) requires such offering price disclosures to be in writing if the triggering representations were in writing. The information required by § 463.4(a) is necessary to address unfair or deceptive conduct associated with the failure to provide such price information and unfairly charging unexpected prices, or for hidden items that can add hundreds or thousands of dollars to a vehicle sale. Disclosing this price information provides consumers with fundamental information that is readily available to the dealer; consumers are misled when dealers misrepresent or otherwise obscure price information or charge for items beyond the advertised vehicle during the long and complex sales, financing, and leasing process. Furthermore, such disclosures also serve to prevent the misrepresentations prohibited by § 463.3—including misrepresentations regarding costs or add-ons—by requiring consumers to be told the true price of the vehicle in advertisements and other communications. These disclosures also help prevent dealers from failing to obtain the express, informed consent of consumers for charges, as addressed by proposed § 463.5(c). The Commission anticipates that the information collection burdens associated with this requirement are *de minimis*.

Further, § 463.4(c) of the Rule requires dealers that sell optional add-on products or services to disclose to consumers, when making a representation about such an add-on, that the add-on is not required, and that the consumer can purchase or lease the vehicle without the add-on. This requirement is necessary to address deceptive and unfair practices regarding these products or services, including misrepresentations that these products are required when they are not, and charging consumers for such products without the consumers' express, informed consent. It requires a simple disclosure of information that is known to the dealer, and serves to prevent the misrepresentations prohibited by § 463.3—including misrepresentations regarding material information about the costs or terms of purchasing, financing, or leasing a vehicle, or about any costs, limitations, benefits, or any other aspect of an add-on—by requiring consumers to be told whether represented add-ons are optional. This disclosure also helps prevent dealers from failing to obtain the express, informed consent of the consumer for charges, as addressed by proposed § 463.5(c). The Commission anticipates that the information collection burdens associated with this requirement are *de minimis*.

Failing to disclose information about the total of payments for a vehicle when representing monthly payment information is deceptive or unfair. Disclosing this total of payments information provides consumers with fundamental information that is readily available

⁴ The term "offering price" is defined in § 463.2(k) of the Rule as "the full cash price for which a Dealer will sell or finance the Vehicle to any consumer, provided that the Dealer may exclude only required Government Charges."

to the dealer when making representations regarding monthly payments, at which time such disclosures would be required. Section 463.4(d) of the Rule require dealers, when making any representation about a monthly payment for any vehicle, to disclose the total amount the consumer will pay to purchase or lease the vehicle at that monthly payment after making all payments as scheduled, as well as the amount of consideration to be provided by the consumer if the total amount disclosed assumes the consumer will provide consideration. Section 463.4(e) of the Rule requires dealers, when making any comparison between payment options that includes discussion of a lower monthly payment to disclose, if true, that the lower monthly will increase the total amount the consumer will pay to purchase or lease the vehicle. Both Section 463.4(d) and (e) require written disclosures if the triggering monthly payment-related representations are in writing.

(b) Recordkeeping

Section 463.6 of the Rule requires dealers to create and retain, for a period of twenty-four months from the date the record is created, all records necessary to demonstrate compliance with the Rule, including with its disclosure requirements. These recordkeeping provisions are necessary to promote effective and efficient enforcement of the Rule, thereby deterring dealers from engaging in deceptive or unfair acts or practices.

The required records will allow the Commission to determine compliance with the Rule and provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult to ensure that entities are complying with the Rule's requirements or to prove Rule violations. The recordkeeping requirements are flexible, allowing dealers to retain materials in any legible form, and are limited to a period of twenty-four months from the date the record is created. The recordkeeping requirements are consistent with, and similar to, the recordkeeping requirements in other Commission rules, as tailored to individual industries and markets.

(3) Consideration of the Use of Information Technology to Reduce Burden

The Rule permits the use of any technologies that covered firms may wish to employ and that may reduce the burden of information collection, and the Commission anticipates many dealers may elect to furnish some disclosures electronically. To the extent the need to disclose transaction-related information to consumers at the point of sale may result in disclosures being provided in hard copy, electronic disclosure pursuant to the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note, is impracticable for such disclosures.

For recordkeeping requirements, the Rule provides that covered motor vehicle dealers may retain the required records in any legible form, and in the same manner, format, or place as they may already keep such records in the ordinary course of business.

(4) Efforts to Identify Duplication

Commission staff did not identify any other federal statutes, rules, or policies that would

duplicate the information collection requirements included in the Rule. A national industry association commenter argued that the Commission failed to identify relevant federal rules that may duplicate, overlap, or conflict with the proposal.⁵ This commenter's arguments that the proposed rule conflicted with federal statutes are addressed in the Rule's section-by-section analysis found in part III of the Statement of Basis and Purpose. Commenters provided no examples of actual conflicts between the proposed information collections and federal law.

(5) Efforts to Minimize Burden on Small Organizations

The Rule applies to covered motor vehicle dealers predominantly engaged in the sale and servicing of covered motor vehicles, the leasing and servicing of covered motor vehicles, or both, as defined in Section 1029 of the Dodd-Frank Act, 12 U.S.C. § 5519. FTC staff believes that most covered dealers would be classified as small businesses. Mindful of this fact, the Commission drafted the Rule in a manner designed to avoid imposing undue burden on small entities. For each provision in the Rule, the Commission has attempted to reduce the burden on businesses, including small entities. For example, the Commission limited the number of disclosures that dealers are required to make under the Rule, and in response to comments, further limited such disclosures by determining not to finalize the disclosures in proposed §§ 463.4(b) and 463.5(b). Similarly, the Commission has limited the duration of the Rule's recordkeeping requirements to twenty-four months from the date the relevant record is created, even though this period is far shorter than the length of many financing contracts. The Commission has also taken care to avoid extensive requirements related to form. For example, the Commission does not specify the form in which records required by the Rule must be kept. Moreover, the Rule's disclosure requirements do not mandate specific font sizes. In sum, the agency has worked to minimize any significant economic impact on small businesses. Pursuant to the Regulatory Flexibility Act, the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities. The estimated economic impact of the Rule, controlling for firm size based on available census data, is less than or equal to 0.27% of annual sales, 1.49% of the gross margin, and 4.12% of the gross margin minus operating expense for dealerships of all sizes.

(6) Consequences of Conducting the Collection Less Frequently

The Rule requires covered motor vehicle dealers to provide mandated disclosures at specified points during motor vehicle sale, financing, or lease transactions. These disclosures are necessary to ensure consumers receive accurate pricing information when motor vehicle dealers advertise vehicles for sale and at key points during sale, financing, and lease discussions. The Rule also requires covered motor vehicle dealers to retain specified records that are necessary to demonstrate their compliance with the Rule and its disclosure requirements for two years from the date the record is created. The Commission has sought to tailor this requirement to limit the potential burden on covered entities. The specified records primarily consist of records that FTC staff anticipate dealers already retain in the ordinary course of business irrespective of the Rule's requirements, including records associated with vehicle financing and customer contracts and

⁵ Comment of Nat'l Auto. Dealers Ass'n, Doc. No. FTC-2022-0046-8368.

leases. In addition, the Commission's Rule also limited the retention period to two years to limit the potential burden on covered entities.

(7) Circumstances Requiring Collection Inconsistent With Guidelines

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

(8) Public Comments/Consultation Outside the Agency

On July 13, 2022, the FTC issued a Notice of Proposed Rulemaking that sought public comment on the proposed information collections relating to disclosure and recordkeeping and on the associated estimates of PRA burden. 87 Fed. Reg. 42,012 (July 13, 2022). The FTC received several comments that were germane to the issues that the agency sought comment on pursuant to the PRA approval request. The PRA section within the Final Rule's Statement of Basis and Purpose⁶ responds to the various comments and explains if or how the comment affects any associated information collection burdens. Each of these comments is included with the submission materials within www.rocis.gov. In addition, some commenters generally discussed burdens pertaining to specific provisions of the Rule. These comments are addressed in the Rule's section-by-section analysis found in part III of the Statement of Basis and Purpose, and available on www.regulations.gov.

(9) Payments and Gifts to Respondents

Not applicable.

(10) Assurances of Confidentiality

Not applicable. No assurance of confidentiality is necessary because although the Rule requires regulated entities to disclose and/or maintain records, it does not require the submission of any such records to the agency. Thus, to the extent, if any, that the agency may require production of such records for law enforcement purposes in specific proceedings, such production would not constitute an information collection activity within the meaning of the Paperwork Reduction Act. In any event, in such proceedings, records would be protected by law from mandatory public disclosure.⁷

(11) Matters of a Sensitive Nature

Not applicable. The Rule does not require the disclosure or production of sensitive or confidential information to the Commission. To the extent that confidential information

⁶ See 89 Fed. Reg. 590 (Jan. 4, 2024).

⁷ See, e.g., Section 21 of the FTC Act, 15 U.S.C. § 57b-2; Exemption 7(A) of the Freedom of Information Act, 5 U.S.C. § 552(b)(7)(A).

covered by a recordkeeping requirement is collected by the Commission for law enforcement purposes, the confidentiality provisions of Section 21 of the FTC Act, 15 U.S.C. § 57b-2, will apply.

(12) Estimated Annual Hours and Labor Cost Burden

Annual Hours of Burden: 1,595,085 hours (derived from 378,168 + 417,110 + 709,065 + 90,742).

Annual Labor Costs: \$51,904,537 (derived from \$11,802,623 + 12,275,547 + 25,248,387 + 2,577,980).

(a) Disclosures

Section 463.4(d) of the Rule require dealers, when making any representation about a monthly payment for any vehicle, to disclose the total amount the consumer will pay to purchase or lease the vehicle at that monthly payment after making all payments as scheduled, as well as the amount of consideration to be provided by the consumer if the total amount disclosed assumes the consumer will provide consideration. Section 463.4(e) of the Rule requires dealers, when making any comparison between payment options that includes discussion of a lower monthly payment to disclose, if true, that the lower monthly payment will increase the total amount the consumer will pay to purchase or lease the vehicle.

Disclosing this total of payments information provides consumers with fundamental information that is readily available to the dealer when making representations regarding monthly payments, at which time such disclosures would be required. Nevertheless, there may be upfront labor costs associated with developing procedures to provide these disclosures consistently at the appropriate point in the transaction and with training employees. The Commission estimates such upfront costs as follows: 8 compliance manager hours per dealer, for an upfront hours burden of 378,168 (8 hours × 47,271). Applying labor cost-rates of \$31.21 per hour yields \$11,802,623.28 ($\$31.21 \times 378,168$ hours).

The Commission also estimates annual ongoing costs of 1 hour of training time for sales and related employees per year, for an annual hours burden of 417,110 (1 hour × 417,110 sales and related employees). Applying labor cost-rates of \$29.43 per hour, the total estimated ongoing labor cost burden is \$12,275,547.30 across the industry (417,110 sales and related employees × 1 hour × \$29.43).

(b) Recordkeeping

Section 463.6 of the Rule requires dealers to create and retain, for a period of twenty-four months from the date the record is created, all records necessary to demonstrate compliance with the Rule, including with its disclosure requirements. These recordkeeping provisions are necessary to promote effective and efficient enforcement of the Rule, thereby deterring dealers from engaging in deceptive or unfair acts or practices.

The Commission anticipates that it will take covered motor vehicle dealers approximately 15 hours to modify their existing recordkeeping systems to retain the required records for the 24-month period specified in the Rule. This yields a general recordkeeping burden of 709,065 hours annually (47,271 motor vehicle dealers × 15 hours per year). The Commission anticipates that programming, administrative, compliance, and clerical staff are likely to perform the tasks necessary to comply with the recordkeeping requirements in § 463.6 of its Rule. In particular, the Commission estimates this 15-hour per-dealer labor hours burden as follows: 8 hours of time for a programmer to design, implement, or update systems for record storage, at a cost-rate of \$40.24 per hour; 5 hours of additional clerical staff work, at a cost-rate of \$20.16 per hour; 1 hour of sales manager review, at a cost-rate of \$80.19 per hour; and 1 hour of review by a compliance officer, at a cost-rate of \$31.21 per hour. Applying these cost-rates to the estimated per-dealer hours burden, the total estimated initial labor cost burden is \$534.12 per average dealership (($\$40.24 \text{ per hour} \times 8 \text{ hours}$) + ($\$20.16 \text{ per hour} \times 5 \text{ hours}$) + ($\$80.19 \text{ per hour} \times 1 \text{ hour}$) + ($\$31.21 \text{ per hour} \times 1 \text{ hour}$)), totaling \$25,248,386.52 across the industry ($\$534.12 \text{ per average dealership} \times 47,271 \text{ dealerships}$).

The Commission is also requiring that dealers not charge a consumer for GAP agreements or other products or services if the consumer would not benefit from the product or service. The Commission anticipates that, to the extent dealers do not currently retain any materials used to make such an assessment, dealers may incur certain additional costs. Specifically, the Commission anticipates that dealers will expend one minute per sales or financing transaction for a salesperson to perform the calculation contemplated by this requirement, at a cost rate of \$28.41 per hour. The Commission estimates that covered motor vehicle dealers sell approximately 31,562,959 vehicles each year, and that approximately 17% of such sales include GAP agreements, for an estimated total of 5,444,502 covered vehicle sales. While the number of motor vehicles sold will vary by dealership, this yields an average sales volume of 115 sales transactions per average dealership per year that include a GAP agreement (5,444,502 covered vehicle sales / 47,271 dealerships). This yields an estimated annual hours burden for all dealers of 90,742 hours (5,444,502 covered transactions × 1/60 hours). Applying the associated labor rates yields an estimated annual labor cost for all dealers of \$2,577,980.22 (90,742 hours × \$28.41 per hour).

(13) Capital and Other Non-Labor Costs

Annual non-labor cost burden: \$14,181,300.

The Commission anticipates that the Rule will impose limited capital and non-labor costs. The Commission presented estimates in the NPRM with respect to such costs and solicited comments on its burden analysis. The Commission estimates that the non-labor costs related to disclosures, which relate to fundamental information (the vehicle offering price, that optional add-ons are not required, and regarding the total amount to purchase or lease the vehicle), will be *de minimis*.

The Commission estimates that each dealer will need to spend approximately \$300 per year on additional storage (either on premises or electronically) to retain records, the annual cost for which would be \$14,181,300 for all covered dealers ($\$300 \times 47,271 \text{ covered dealers}$).

(14) Estimated Cost to the Federal Government

Staff does not estimate any additional costs to the Federal Government.

(15) Program Changes or Adjustments

This is a newly promulgated rule which qualifies as a program change, not an adjustment.

(16) Statistical Use of Information/Publication of Results

Not applicable. There are no plans to publish for statistical use any information required by the Rule.

(17) Requested Permission Not to Display the Expiration Date for OMB Approval

The OMB control number and expiration date associated with this PRA submission will be displayed on the Federal government's electronic PRA docket at www.reginfo.gov. There are no government forms or other documents upon which display of the control number and expiration date would be appropriate.

(18) Exceptions to the "Certification for Paperwork Reduction Act Submissions"

Not applicable.