

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

In response to comments solicited by the Federal Trade Commission (“FTC” or “Commission”) as part of a systematic review of its rules and guides, the Commission amends its Used Motor Vehicle Trade Regulation Rule (“Used Car Rule” or “Rule”). Specifically, the Commission adopts changes to the Rule’s Buyers Guide that used motor vehicle dealers are required to display on used motor vehicles offered for sale to describe warranty and other information that dealers are offering in the sale. In accordance with the Paperwork Reduction Act (“PRA”) 44 U.S.C. §§ 3501-3521, the FTC seeks approval from the Office of Management and Budget (“OMB”) for these Rule amendments.

(1) Necessity for Collecting the Information

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. 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 a 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 published a Supplemental Notice of Proposed Rulemaking (“SNPRM”).² The SNPRM proposed 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. In particular, the Commission sought comment on a revised approach to vehicle history information that would have required dealers that have vehicle history reports to indicate that fact on the Buyers Guide and to make the reports available to consumers upon request.

After reviewing public comments submitted on the NPRM and SNPRM, the Commission now adopts a Final Rule revising the Buyers Guide. The Commission considered various approaches to vehicle history information that ranged from not addressing that information at all, to requiring dealers to obtain and to disclose reports from the National Motor Vehicle Identification System (“NMVTIS”) and to variations on the SNPRM approach. In the Final Rule, the Commission adopts a proposal similar to the one initially proposed in the NPRM that attempts to balance these various proposals. The revised Buyers Guide in the Final Rule

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

² 79 Fed. Reg. 70804 (Nov. 28, 2014).

includes a Buyers Guide statement recommending that consumers obtain a vehicle history report, check for safety recalls, and visit an FTC website for more information.

In light of comments addressing the other issues raised by the NPRM and the SNPRM, the Commission also has revised the Buyers Guide by: revising the statement describing the meaning of an “As Is” sale, in which a dealer offers a vehicle for sale without a warranty, to clarify that the statement only refers to whether the dealer is providing a warranty to make after sale repairs; (2) moving boxes to the front of the Buyers Guide where dealers could indicate additional warranty and service contract coverage; (3) adding a Spanish statement to the English Buyers Guide advising Spanish-speaking consumers, who cannot read the English Buyers Guide, to ask for a Spanish Buyers Guide if the dealer conducts a sale in Spanish; and (4) adding air bags and catalytic converters to the list of major defects on the back of the Buyers Guide.

(2) Use of the Information

The changes in disclosures should provide consumers with additional useful information concerning sources and types of information about a vehicle’s history, including possible salvage and damage history, and whether the vehicle has been subject to a safety recall to help consumers make informed decisions when purchasing used cars. The revised Buyers Guide should 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 and provide consumers with more information about the warranty coverage, if any, on a vehicle they are considering purchasing.

(3) Consideration of Using Improved Technology to Reduce Burden

The revised Buyers Guide directs consumers to an FTC website for additional information. Commission staff anticipates that the website will provide direct information as well as live links to other sources of information. Staff intends to make a downloadable and fillable version of the revised Buyers Guide available on the Commission’s website.

(4) Efforts to Identify Duplication

The Rule has been in effect since 1985. No other federal law or regulation requires that dealers make the Buyers Guide disclosures when they offer a used vehicle for sale.³ Two states, Maine and Wisconsin, require the disclosure of related but different information regarding used car sales.⁴

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) 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 has sought to reduce the burden on small businesses by crafting the Final Rule to minimize the compliance burden upon dealers generally. The existing Rule already requires dealers to display Buyers Guides on used cars that they offer for sale. The amended Rule will require only that dealers replace their existing Buyers Guides. The Final Rule provides that dealers may use existing stock. The revised Buyers Guide makes optional disclosures concerning warranty coverage that were already permitted under the existing Rule easier by adding boxes that dealers simply can check if they choose to disclose the information. The Commission considered, but did not adopt, a requirement that dealers obtain vehicle history reports and a requirement that dealers provide copies of the reports if the dealers obtained them. Instead, the Buyers Guide contains pre-printed information about vehicle history reports.

(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 Commission considered public comments that it received in response to the NPRM and SNPRM.⁵ After reviewing the comments, the Commission now is publishing a Final Rule. The comments received in response to the NPRM and SNPRM, and the Commission's responses to them, are discussed in detail, respectively, in the Supplementary Information sections of the SNPRM and final rule publications.

(9) Payments and Gifts to Respondents

Not applicable.

(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

⁵ Public comments on the NPRM are available at: <https://www.ftc.gov/policy/public-comments/initiative-460>, and, on the SNPRM, at: <https://www.ftc.gov/policy/public-comments/initiative-583>.

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 amendments concerning vehicle history reports will not increase the burden on dealers except for the costs involved in obtaining revised, substitute Buyers Guides. The Final Rule provides that dealers may use their existing stock of Buyers Guides. The change to the Buyers Guide's description of "As Is" sales will not impose any additional burden on dealers other than the initial burden of purchasing replacement Buyers Guides. The amendments will 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. Notably, the amended Rule will make providing the disclosures, already permitted by the existing Rule, easier. The amendments change the burden estimates because the burden imposed on some dealers will increase. Burden estimates for the amendments appear below.

Estimated Additional Annual Hours Burden

A. Number of Respondents

The amendments to the Rule will affect all 54,437 used vehicle dealers⁶ in the United States. The amendments will require all dealers to obtain and to use replacement Buyers Guides, but, as noted above, dealers may first exhaust their existing stock of Buyers Guides.

B. Recordkeeping Hours

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

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

⁶ The estimated number of dealers is based on the most current data available: 37,892 independent dealers in 2012. *NIADA Used Car Industry Report* (2013), at 16; plus 16,545 franchised new car dealers in 2015. *NADA Data 2015*, at 3. Staff had previously estimated the number of dealers to be 55,432. *See* 79 Fed. Reg. at 70,813 n. 94.

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

information collection tasks required by the Rule.⁸ Staff revises its estimate of the number of used cars sold by dealers to 27,966,551⁹ and the number of dealers to 54,437.¹⁰

The Final Rule, like the NPRM and SNPRM, provides for optional disclosures concerning non-dealer warranties. As explained in the NPRM, FTC staff has estimated that dealers will make the optional disclosures on 25% of used cars offered for sale. Dealers who choose to make the optional disclosures should obtain amended Buyers Guides and complete them by checking additional boxes not appearing on the current Buyers Guide. In the past, staff has estimated that completing Buyers Guides requires approximately 2 minutes per vehicle for vehicles sold without a warranty and 3 minutes per vehicle for vehicles sold with a warranty.¹¹ Staff believes that checking the additional boxes should require dealers no more than an additional 30 seconds per vehicle.¹² Thus, based on 27,966,551 used cars sold, making the optional disclosures permitted by the amendments would increase the estimated burden by 58,264 hours (25% x 27,966,551 vehicles sold x 1/120 hour per vehicle).

D. Reporting Hours

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

E. Labor Costs

(1) Recordkeeping

None.

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 NIADA's Used Car Industry Report 2016, at 31 (citing NADA data for the total number of used vehicles sold by franchised and independent dealers in 2015).

¹⁰ See note 6 above.

¹¹ See, e.g., 78 FR 59032, 59032 (Sept. 25, 2013) (Notice: "Agency Information Collection Activities; Proposed Collection; Comment Request; Extension").

¹² Previously, dealers who opted to disclose the applicability of manufacturers' warranties could do so by adding a statement to the Buyers Guide, 16 C.F.R. 455.2(2)(b)(v), which likely would take longer than simply checking a box to make the same disclosure. The projected increment of 30 seconds is a combined reflection of time saved through the latter means and the incremental time accorded to checking off additional boxes tied to new disclosures under the Final Rule.

(2) Disclosure

The estimated annual incremental cost of the amendments to the Rule is \$893,187. That figure is the product of estimated burden hours (58,264) multiplied by an hourly labor rate of \$15.33¹³ for clerical or administrative staff.

(3) Reporting

None.

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

The FTC has made 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.

Assuming, as stated above, that dealers will make the optional disclosures on 25% of the 27,966,551 used cars offered for sale, and assuming further a cost of thirty cents per preprinted Buyers Guide, incremental purchase costs per year will total \$2,097,491. Any other capital costs associated with the amendments are likely to be minimal.

(14) Estimate of Cost to Federal Government

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

(15) Program Changes/Adjustments

The estimates herein use as their base an estimated number of used vehicles sold yearly (27,966,551) and an estimated number of used car dealers (54,437) that are both lower than the estimates the FTC published for comment and submitted to OMB regarding its two most recent clearance requests under this Rule. The instant estimates rely on newer available data than the prior estimated number of used car vehicles sold (28,958,000) and used car dealers (55,432) for the ICRs tied to the 2014 SNPRM¹⁴ and the pre-amended Rule.¹⁵

The following delineates between changes in burden estimates tied to regulatory changes and those tied merely to updates regarding estimates of the number of used vehicles and related

¹³ <http://www.bls.gov/news.release/ocwage.nr0.htm>. Bureau of Labor Statistics, Economic News Release, March 30, 2016, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2015.” The hourly rate drawn from this source is for “[o]ffice clerks, general.

¹⁴ ICR Reference No. 201410-3084-004 (OMB Jan. 2, 2015 filed comment for the FTC to consider the public comments on the information collection provisions of the SNPRM and “provide a response and any necessary adjustments in its next submission to OMB”).

¹⁵ ICR Reference No. 201312-3084-003 (OMB Jan. 24, 2014 approval of FTC request to renew OMB clearance for the then-existing Rule’s information collection provisions and associated burden estimates).

dealers. The comparisons are between this submission's estimates and those OMB last approved, which pertained to the pre-amended Rule.

A. Effects of the Additional (Optional) Disclosures

The estimates for optional disclosures under the final amendments, applied to the updated estimate of 27,966,551 used cars sold per year, yields an estimated incremental burden of 58,264 hours.

Estimating, as stated above, that dealers will make the optional disclosures on 25% of the 27,966,551 used cars offered for sale, and assuming further a cost of thirty cents per preprinted Buyers Guide, incremental purchase costs per year will total \$2,097,491.

B. Effects of Adjustments (Updates) to Past Estimates [78,791 fewer hours and \$297,434 in reduced purchase costs tied solely to updated estimated number of used car dealers and/or used cars sold]

The estimate of the population of car dealers that order and stock Buyers Guides is updated to 54,437¹⁶ from the most recently cleared estimate of 55,432. The estimated number of used cars vehicles sold per year is decreased from 28,958,000 to 27,966,551. The effects of these adjusted estimates have the following consequences for the most recently cleared prior burden estimates.

1. Used Car Dealers Ordering and Stocking Buyers Guides

Based on the unchanged, previously cleared estimate of two hours per year to order and stock Buyers Guides, applied to the reduced population estimate of 54,437 used car dealers, results in a decrease of 1,990 hours.

2. 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.

$(27,966,551 \times .50 = 13,983,276 \text{ vehicles}) - (\text{previously cleared: } 28,958,000 \times .50 = 14,479,000 \text{ vehicles}) \times 2 \text{ minutes per vehicle} = 16,524 \text{ fewer hours; } (14,479,000 - 13,983,276) \times \text{thirty cents per Buyers Guide} = \$148,717 \text{ reduction in incremental purchase cost}$

¹⁶ See *supra* note 6 and accompanying text.

3. 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.

$(27,966,551 \times .50 = 13,983,276 \text{ vehicles}) - (\text{previously cleared: } 28,958,000 \times .50 = 14,479,000 \text{ vehicles}) \times 3 \text{ minutes per vehicle} = 24,786 \text{ fewer hours}; (14,479,000 - 13,983,276) \times \text{thirty cents per Buyers Guide} = \$148,717 \text{ reduction in incremental purchase cost}$

4. 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.

$(27,966,551 - 28,958,000 \text{ vehicles}) \times 1.75 \text{ minutes per vehicle} = 28,917 \text{ fewer hours}$

5. 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.

$(27,966,551 - 28,958,000 \text{ vehicles}) \times .02 \times 2 \text{ minutes per revision} = 661 \text{ fewer hours}$

6. Spanish Language Sales

The following estimates for Spanish language sales assume as above (for English language sales) two minutes per vehicle to enter data on Buyers Guides without a warranty, three minutes for those with a warranty, and 1.75 minutes per vehicle to match the correct Buyers Guide to the vehicle and to display it on the vehicle. Based on updated data that suggests that approximately 5.5 percent of the United States population speaks Spanish at home, without also speaking fluent English,¹⁷ staff adjusts its prior assumption that approximately 5.6 percent of used car sales will be conducted in Spanish and assumes that approximately 5.5 percent of used car sales will be conducted in Spanish.

¹⁷ U.S. Census Bureau, TableB16001. *Language Spoken At Home By Ability To Speak English For The Population 5 Years And Over*. 2014 American Community Survey 1-Year Estimates, available at: http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_B16001&prodType=table (5.48% of the United States population 5 years or older who speak Spanish or Spanish Creole in the home speak English less than “very well”) (percentage calculated from raw numbers).

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

i. $14,479,000$ vehicles previously estimated x reduction in percentage assumed transactions conducted in Spanish $(.055 - .056) = 482$ fewer hours

ii. $(13,983,276 - 14,479,000)$ vehicles) x $.055$ x 2 minutes per vehicle = 909 fewer hours

subtotal: 1,391 fewer hours

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

i. $14,479,000$ vehicles previously estimated x reduction in percentage assumed transactions conducted in Spanish $(.055 - .056)$ x 3 minutes per vehicle = 724 fewer hours

ii. $(13,983,276 - 14,479,000)$ vehicles) x $.055$ x 3 minutes per vehicle = 1,363 fewer hours

subtotal: 2,087 fewer hours

(c) Displaying Buyers Guides on Used Cars

i. $28,958,000$ total vehicles previously estimated x reduction in percentage assumed transactions conducted in Spanish $(.055 - .056)$ x 1.75 minutes per vehicle = 845 fewer hours

ii. $(27,966,551 - 28,958,000)$ vehicles) x $.055$ x 1.75 minutes per vehicle = 1,590 fewer hours

subtotal: 2,435 fewer hours

7. Reduced Purchase Costs Tied Solely to Updated Estimated Number of Used Cars Sold

As before, staff assumes that the average cost of each Buyers Guide is thirty cents based on industry input.

$(27,966,551 \times \$0.30) - ((\text{previously cleared: } 28,958,000 \times \$0.30) =$
 $\$297,434$ reduced estimate

(16) **Plans for Tabulation and Publication**

Not applicable.

(17) Failure to Display the OMB Expiration Date

Not applicable.

(18) Exceptions to Certification

Not applicable.