



Submitted via www.regulations.gov

July 18, 2022

Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex C)
Washington, DC 20580

Re: Request for Extension to Comment Period
Motor Vehicle Dealers NPRM, File No. P204800

The National Automobile Dealers Association (NADA)¹ hereby requests that the Federal Trade Commission (FTC or Commission) extend by a minimum of 120 days the 60-day period that the Commission has provided for the public to comment on the motor vehicle trade regulation rule it has proposed in the above captioned matter.²

On June 23, 2022, the FTC released on its website a comprehensive proposed unfair or deceptive acts or practices (UDAP) rule that is unprecedented in scope and would affect tens of millions of consumer transactions annually. The proposed rule seeks to:

1. prohibit a wide range of activity;
2. establish certain advertising standards;
3. require an extensive series of oral and written disclosures governing communications with consumers related to the sales price of automobiles, certain credit terms, and voluntary protection products (VPP);
4. mandate the posting of certain information on dealer websites; and
5. impose a massive set of new recordkeeping requirements.

¹ NADA represents over 16,000 franchised automobile and truck dealers in all 50 states who sell, finance, and lease new and used motor vehicles and engage in service, repair, and parts sales. This includes approximately 1,800 commercial truck dealers. NADA members collectively employ 1.2 million people nationwide.

² 87 Fed. Reg. 42,012 – 42,048 (Jul. 13, 2022).

The Commission did not announce that it would be taking this action in advance of its release,³ and it did not precede this broad exercise with a Request for Information or even an Advanced Notice of Proposed Rulemaking (ANPRM).⁴

Consequently, motor vehicle dealers who are covered by the proposed rule,⁵ and the many other types of businesses that will be affected by it, have had no notice of – or any opportunity to research and address – the proposed components of the Notice of Proposed Rulemaking (NPRM) or even an outline of proposals, if any, that the Commission considered prior to its release.⁶

In addition, as part of this exercise, the Commission seeks comment on an extremely broad and open-ended set of 49 questions that include, but are not limited to, the following:

- the scope of the proposed rule (e.g., whether it should address a range of other topics including other unfair or deceptive acts or practices, leasing, interest rates, other financing terms, electronic disabling devices, online sales, electronic disclosures, the availability of vehicles, matters involving servicemembers, conditional sales, and lien payoffs);⁷

³ The Commission states that “this Notice of Proposed rulemaking was not included in the Commission’s Spring 2022 Regulatory Agenda because the Commission first considered this notice after the publication deadline for the Regulatory Agenda.” 87 Fed. Reg. at 42,031. Given that the publication deadline must have been reasonably close in time to The White House’s release of The Spring Regulatory Agenda on June 21, 2022 (two days before the Commission’s release of the NPRM)(see www.whitehouse.gov/omb/briefing-room/2022/06/21/the-spring-regulatory-agenda/ (last visited July 18, 2022)), it is remarkable that the Commission “first considered” a notice of this magnitude in this very short period of time.

⁴ See Administrative Conference of the United States’ *Administrative Conference Recommendation 2018-7* explaining the importance for agencies to exercise due diligence before issuing a notice of proposed rulemaking (“Agencies should consider using requests for information (RFIs) or advance notices of proposed rulemaking (ANPRMs) when they need to: i. gather information or data about the existence, magnitude, and nature of a regulatory problem; ii. evaluate potential strategies to address a regulatory issue; iii. choose between more than one regulatory alternative; or iv. develop and refine a proposed rule....”). The Administrative Conference of the United States, *Administrative Conference Recommendation 2018-7* (Dec. 14, 2018), <https://www.acus.gov/sites/default/files/documents/Recommendation%202018-7%20%28Public%20Engagement%20in%20Rulemaking%29.pdf> (last visited July 18, 2022).

⁵ The proposed rule applies to motor vehicle dealers defined in proposed section 463.2(e) and therefore excludes motor vehicle dealers who lack a service facility.

⁶ In contrast, see e.g., the Consumer Financial Protection Bureau’s *Outline of Proposals Under Consideration and Alternatives Considered* (Sep. 15, 2020) to implement section 1071 of the Dodd-Frank Act, https://files.consumerfinance.gov/f/documents/cfpb_1071-sbrefa_outline-of-proposals-under-consideration_2020-09.pdf (last visited July 18, 2022), which followed a Request for Information on the matter. 82 Fed. Reg. 22,318 – 22,322 (May 15, 2017); 82 Fed. Reg. 32,177 – 32,178 (Jul. 12, 2017).

⁷ Questions for Comment 2, 3, 7, 8, and 14-17.

- the scope, timing, language, clarity, efficacy, and net effect of the proposed notice requirements;⁸
- how the “offering price” concept works in the present market and how it would or should affect other information with regard to both advertisements and disclosures;⁹
- what VPPs motor vehicle dealers offer, how dealers currently obtain consent for the purchase of VPPs, which other VPPs should be prohibited, whether VPP sales should be restricted when the vehicle sale occurs and whether they should be accompanied by a cancellation right, which VPPs involve pricing differentials, how VPP disclosures should be structured, and whether instructions should be provided on how to calculate loan-to-value ratios;¹⁰
- whether dealers can calculate accurate monthly payment information without calculating the total amount a consumer must pay to purchase or lease a vehicle and the value of such information, particularly if presented multiple times;¹¹
- whether the scope and period of the records retention requirements is appropriate and how it affects the current records retention practices of motor vehicle dealers;¹² and
- how the proposed rule affects state law and the state experience in these areas.¹³

While it is extraordinary that this effort to collect such widespread and extensive market information was not initiated *prior* to the promulgation of a proposed rule,¹⁴ stakeholders now find themselves with a very limited window of time to attempt to provide the Commission with accurate and meaningful responses to these numerous, in depth inquiries. In addition, the Commission also seeks information related to the assumptions, methodologies, calculations, and projected costs, benefits, and economic impact of the various elements of the proposed rule

⁸ Questions for Comment 19-25.

⁹ Questions for Comment 26-27.

¹⁰ Questions for Comment 28, 31, and 33-39.

¹¹ Questions for Comment 29 and 30.

¹² Questions for Comment 40-47.

¹³ Questions for Comment 48-49.

¹⁴ This is particularly true of a discretionary rulemaking of this nature which is not mandated by Congress and, therefore, not subject to any statutory deadlines.

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throughout its Paperwork Reduction Act and Regulatory Flexibility Act analyses. And the Commission requests additional cost information in several of its Questions for Comment.¹⁵

Any attempt to provide the Commission with meaningful data, information, and perspective on these massive inquiries will require considerably longer than the 60-day comment period set forth in the NPRM.¹⁶ Accordingly, NADA respectfully requests that the FTC (i) extend the comment period by a minimum of 120 days, and (ii) act on this request at its very earliest opportunity.

Thank you for your consideration.

Sincerely,

/s/

Paul D. Metrey
Senior Vice President, Regulatory Affairs

¹⁵ See, e.g., Question 6 (“What economic burdens would be imposed on dealers if the Rule proposals were adopted?”); Question 16 (“Are there data regarding the feasibility of finalizing vehicle financing at or before the time the retail installment sales [sic] contract is signed?”); Question 20 (“What would be the economic impact, and costs and benefits, of these disclosure requirements?”); Question 21 (““If so, what are the costs and benefits associated with these additional disclosures?”); and Question 45 (“What costs would these recordkeeping requirements impose on businesses, including small businesses? What would be the overall economic impact of these requirements? Please quantify these benefits and costs wherever possible.”).

¹⁶ For example, a respected industry research firm informed NADA that it would require a minimum of 120 days to prepare a report on the potential costs that the proposed rule would impose on franchised automobile dealers. This would address only one of the many areas of inquiry the Commission has presented in the NPRM. And we have recent experience that supports these time estimates. NADA commissioned a narrower cost study in response to the CFPB’s NPRM relating to the implementation of section 1071 of the Dodd-Frank Act, 86 Fed. Reg. 56,356 – 56,606 (Oct. 8, 2021)(see Footnote 6 above), and that study took over 4 months to complete.