



Office of the Chair

UNITED STATES OF AMERICA
Federal Trade Commission
WASHINGTON, D.C. 20580

September 24, 2024

The Honorable Ashley Hinson
Financial Services and General Government Subcommittee
Committee on Appropriations
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Hinson:

I appreciate the opportunity to continue our conversation about the Combating Auto Retail Scams Trade Regulation Rule (“CARS Rule” or “Rule”), which the Federal Trade Commission (“FTC” or “Commission”) finalized to curb illegal bait-and-switch practices and hidden junk fees that harm consumers and law-abiding dealers. As you noted during my May 15, 2024, appearance before the Subcommittee, the Commission decided to pause the effective date of the CARS Rule pending litigation.

In your letter, you asked about the CARS Rule’s application to commercial truck dealers. In brief, the CARS Rule does not contain an exclusion based on truck size, so dealers that otherwise meet the Rule’s definition of “Covered Motor Vehicle Dealer” would be covered by the Rule. The Commission initially proposed dealer¹ and vehicle² coverage that

¹ See Fed. Trade Comm’n, Notice of Proposed Rulemaking, Motor Vehicle Dealers Trade Regulation Rule, 87 Fed. Reg. 42012, 42045 (July 13, 2022) (definition of “Motor Vehicle Dealer, at proposed section 463.2(e)); 12 U.S.C. § 5519(a) (discussing authority over “motor vehicle dealer[s] that [are] predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both”), (f)(2) (defining “motor vehicle dealer” as “any person or resident in the United States, or any territory of the United States, who—(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and (B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.”). Parts (1) and (2) of the definition of “Dealer” in both the proposed rule and the final CARS Rule are drawn from subparagraphs (A) and (B) of 12 U.S.C. § 5519(f)(2); Part (3) of the definition of “Dealer” in both the proposed rule and in the final CARS Rule is drawn from paragraph (a) of § 5519. See Fed. Trade Comm’n, Final Rule, Combating Auto Retail Scams Trade Regulation Rule, 89 Fed. Reg. 590, 608, 693-94, nn. 146-47 & accompanying text (Jan. 4, 2024).

² See 87 Fed. Reg. at 42045 (definition of “Motor Vehicle,” at proposed section 463.2(j)); 12 U.S.C. § 5519(f)(1) (defining “motor vehicle” as “(A) any self-propelled vehicle designed for transporting persons or property on a street, highway, or other road; (B) recreational boats and marine equipment; (C) motorcycles; (D) motor homes, recreational vehicle trailers, and slide-in campers, as those terms are defined in sections 571.3 and 575.103(d) of title 49, Code of Federal Regulations, or any successor thereto; and (E) other vehicles that are titled and sold through dealers.”). Parts (1) through (5) of the proposed definition of “Dealer” were drawn from subparagraphs (A) through (B) of 12 U.S.C. § 5519(f)(1); the final CARS Rule excluded from coverage elements from Parts (2) through (4) of the proposed definition of “Dealer” See Fed. Trade Comm’n, Final Rule, Combating Auto Retail Scams Trade Regulation Rule, 89 Fed. Reg. at 607, 693.

mirrored the terms of the authorizing statute, and despite comments from industry participants representing commercial truck dealers, we did not receive comments that proposed treating vehicle dealers differently based on truck size.

The CARS Rule applies only to a narrowly defined set of covered motor vehicles and their dealers.³ To arrive at the Rule’s operative definitions, the Commission started with the rulemaking authority granted to it by Congress, issuing a Notice of Proposed Rulemaking (“NPRM”) that proposed to cover all motor vehicles as defined in Section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”), 15 U.S.C. §5519(f)(1).⁴ Along with this proposal, the Commission actively solicited feedback about the proposed rule to inform its deliberations, publishing a series of Questions for Comment about the scope of the proposal and whether adjustments should be made.⁵ These included a question specifically about whether the proposed definitions should be narrowed.⁶

The Commission received and reviewed over 27,000 comments in response to its NPRM and made a number of changes in the final Rule based on comments received, including from dealerships and industry groups. As you noted during my May 15, 2024, appearance before the Subcommittee, and as the Commission explained in its Statement of Basis and Purpose accompanying the CARS Rule, these changes included specific exclusions for certain types of vehicles, including recreational boats and marine equipment; motorcycles, scooters, and electric bicycles; motor homes, recreational vehicle trailers, and slide-in campers; and golf carts.⁷ The Commission also determined to focus the CARS Rule on combating two harmful scams that many military and other commenters discussed experiencing—illegal bait-and-switch tactics and hidden junk fees—and finalized a rule that is narrower than what the Commission originally proposed. The Department of Defense stated that the Rule “will help fight predatory practices that target our men and women in uniform. The Department is pleased to see the FTC issue the CARS Rule and believes it will contribute to service members’ overall economic security and readiness.”⁸

³ See 89 Fed. Reg. at 693-94 (defining, at 463.2(e) & (f), “Covered Motor Vehicle” and “Covered Motor Vehicle Dealer”).

⁴ See 87 Fed. Reg. 42035 & n. 178 (“The proposed rule applies to motor vehicle dealers as defined in Section 1029 of the Dodd-Frank Act.”), proposed § 463.2(e) & (j) (proposing to define “Dealer or Motor Vehicle Dealer” and “Motor Vehicle,” respectively, based on the corresponding definitions for those terms in Section 1029 of Dodd-Frank, 12 U.S.C. § 5519); see also 87 Fed. Reg. at 42012 n.1, 42013 & n.19, 42031 & n.151.

⁵ See, e.g., Q. 10 (“Are the proposed definitions clear? Should any changes be made to any definitions? Should the scope of any of the proposed definitions be expanded or narrowed, and if so, why?”), Q. 6 (asking whether there were “changes that could be made to lessen any . . . burdens” the rule would impose on dealers “without significantly reducing the benefits to consumers”). 87 Fed. Reg. at 42028.

⁶ Q. 10, 87 Fed. Reg. at 42028.

⁷ See § 463.2(e)(1)-(4), 89 Fed. Reg. at 607-08, 693.

⁸ Press Release, Fed. Trade Comm’n, “FTC Announces CARS Rule to Fight Scams in Vehicle Shopping” (Dec. 12, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/12/ftc-announces-cars-rule-fight-scams-vehicle-shopping>.

Notwithstanding comments from stakeholders representing a wide range of viewpoints, including commenters representing commercial truck dealers and other industry participants, the Commission did not receive comments that proposed treating vehicles differently based on truck size. As I mentioned during my appearance before the Subcommittee, the Commission determined coverage under the Rule based on our rulemaking record, which includes the comments received during the public notice-and-comment period.

The Commission carefully evaluated the Rule’s impact in a detailed, data-driven final regulatory analysis, which cataloged and quantified the incremental benefits and costs of the Rule’s provisions and concluded that the estimated benefits to the public from the Rule would outweigh the costs to dealers.⁹ The Commission reviewed more than 27,000 public comments on the Commission’s NPRM, which included a preliminary regulatory analysis of the benefits and adverse effects of the proposed rule, and made changes in response to comments. The Commission provided a step-by-step explanation of the methodology, data sources, and assumptions underlying the final regulatory analysis. In addition, the Commission included several stress-tests of its conclusions: a sensitivity analyses of modest departures from the Commission’s “base-case” (i.e., most likely) estimates of time savings and labor costs, including an alternative that combined higher costs and lower benefits assumptions; a sensitivity analysis that considered the possibility of significantly higher labor costs than were assumed in the base analysis; and a simulation analysis where, in each scenario, both costs and benefits varied randomly around the base case assumptions. Under each scenario, the Commission found the Rule would result in benefits to the public that outweigh the Rule’s costs. In fact, the Rule does not impose substantial costs, if any, on dealers that presently comply with the law, and to the extent there are costs, those are outweighed by the benefits to consumers, to law-abiding dealers, and to fair competition—as honest dealers will not be at a competitive disadvantage relative to dishonest dealers.

The CARS Rule garnered support from current and former dealers and dealership employees. A “family run ‘mom and pop’ dealer” commented that “[o]verwhelmingly, automotive dealership advertising is ridiculously deceptive” and “a contest of which dealership can effectively lie the best.”¹⁰ One former dealer stated that the Rule has been needed “for a very long time” to address the “massive deceptive and unethical business practices that are currently taking place in the car industry,” and that it “will only help good dealers and clean up the industry by exposing the bad apples who are a stain on the car industry and should be driven out ASAP.”¹¹ Dealers also expressed concern that the abusive practices by unscrupulous dealers placed them at a competitive disadvantage and indicated that adoption of the Rule would help level the playing field.¹² Your letter also asked about

⁹ See 89 Fed. Reg. at 672-93.

¹⁰ Comment Submitted by National Consumer Law Center, Motor Vehicle Dealers Trade Regulation Rule, *Regulations.gov* (Sept. 15, 2022), <https://www.regulations.gov/document/FTC-2022-0046-0003>.

¹¹ Comment Submitted by Igor Koske, Motor Vehicle Dealers Trade Regulation Rule, *Regulations.gov* (Sept. 14, 2022), <https://www.regulations.gov/comment/FTC-2022-0046-6852>.

¹² See Comment Submitted by Anonymous, Motor Vehicle Dealers Trade Regulation Rule, *Regulations.gov* (Aug. 29, 2022), <https://www.regulations.gov/comment/FTC-2022-0046-2323> (Comment from “a licensed motor vehicle dealer” complaining that certain “practices ... make it harder for honest dealers to compete with bait and switch specialists”); see also Brief for Stewart

complaints against heavy-duty truck dealers and the Commission’s law enforcement actions. Here as elsewhere across the economy, the Commission takes in reports from consumers about problems they experience in the marketplace and stores those reports in the agency’s Consumer Sentinel Network (“Sentinel”)— a secure online database available only to the FTC and other law enforcement agencies, who use information in Sentinel to spot trends, identify questionable business practices and targets, and enforce the law. Sentinel sorts these consumer reports into 29 categories, most of which include a number of subcategories. The “Auto Related” Sentinel category includes the following report subcategories: (1) Auto Financing; (2) Auto Parts and Repairs; (3) Auto Renting and Leasing; (4) Gasoline; (5) New Auto Sales; and (6) Used Auto Sales.

While Sentinel does not have a subcategory specifically for complaints against heavy-duty commercial truck dealers, in each of the past five years, the Commission received more than 100,000 complaints regarding motor vehicle sales, financing, service and warranties, and rentals and leasing.¹³ Many of these complaints concerned deceptive or unfair acts or practices affecting U.S. consumers. Complaints about motor vehicle transactions are regularly in the top ten complaint categories tracked by the Commission,¹⁴ including for military consumers.¹⁵ And consumer complaints are just the tip of the iceberg; most consumers subjected to these unlawful practices may not even realize they were deceived, and only a fraction of those who know they have been victimized lodge complaints.¹⁶

Agency, inc. d/b/a Earl Stewart Toyota of North Palm Beach and Tomlinson Motor Company as Amici Curiae Supporting Respondents, Nat’l Auto. Dealers Ass’n v. Fed. Trade Comm’n, No. 24-60013 (5th Cir. May 21, 2024) (brief of auto dealerships in support of the CARS Rule).

¹³ See, e.g., Fed. Trade Comm’n, “Consumer Sentinel Network Data Book 2023” app. B3 at 86 (Feb. 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN-Annual-Data-Book-2023.pdf (reporting complaints about new and used motor vehicle sales, financing, service & warranties, and rentals & leasing, collectively, of more than 100,000 in 2020, 2021, and 2022); Fed. Trade Comm’n, “Consumer Sentinel Network Data Book 2021” app. B3 at 85 (Feb. 2022), https://www.ftc.gov/system/files/ftc_gov/pdf/CSN%20Annual%20Data%20Book%202021%20Final%20PDF.pdf (reporting complaints about new and used motor vehicle sales, financing, service & warranties, and rentals & leasing, collectively, of more than 100,000 in 2019, 2020, and 2021).

¹⁴ See Consumer Sentinel Network Data Book 2023 at 7; Consumer Sentinel Network Data Book 2021 at 7.

¹⁵ See Consumer Sentinel Network Data Book 2023 at 18; Consumer Sentinel Network Data Book 2021 at 18.

¹⁶ See 89 Fed. Reg. at 594, n. 49 & accompanying text. The Commission’s recent enforcement action against a large, multistate dealership group is illustrative of this point in the motor vehicle marketplace: in that matter, the Commission received 391 complaints—about add-ons and other issues—over a several-month period prior to filing a complaint against the thirteenth largest dealership group in the country by revenue as of 2020. See Complaint, *Fed. Trade Comm’n v. N. Am. Auto. Servs., Inc.*, No. 1:22-cv-0169 (N.D. Ill. Mar. 31, 2022). However, in a survey of the dealer’s customers over the same time period, 83% of respondents—or at least 16,848 customers—indicated they were subject to the dealer’s allegedly unlawful practices related to add-ons alone. *Id.* at ¶ 27; see also Press Release, Fed. Trade Comm’n, “FTC Returns Additional \$857,000 To Consumers Harmed by Napleton Auto’s Junk Fees and Discriminatory Practices” (Nov. 20, 2023), <https://www.ftc.gov/news-events/news/press-releases/2023/11/ftc-returns-additional-857000-consumers-harmed-napleton-autos-junk-fees-discriminatory-practices>.

The CARS Rule defines specific unfair or deceptive acts or practices within the meaning of section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).¹⁷ As the Commission underscored in conjunction with the CARS Rulemaking, regardless of the definition of “Covered Motor Vehicle” under the Rule, unfair and deceptive practices remain unlawful under the FTC Act, and the Commission will continue to monitor all vehicle markets to determine whether additional action is warranted to protect consumers.¹⁸ The Commission notes that no dealer may misrepresent material terms; deceive customers about prices, additions, or payments; charge for products that provide no benefit; or charge consumers without express, informed consent. To the extent that dealers engage in such conduct, they are in violation of the FTC Act.¹⁹ Importantly, the Commission focuses its law enforcement work on practices that are likely to cause significant harm to consumers. To the extent there are markets where the Commission is not seeing consumer complaints or otherwise learning of unfair or deceptive practices, that will affect where we commit our enforcement resources.

The FTC appreciates your interest in the agency’s recent rulemaking efforts. If you or your staff have additional questions or comments, please do not hesitate to contact Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2946.

Sincerely,



Lina M. Khan
Chair
Federal Trade Commission

¹⁷ CARS Rule Section 463.1 (Authority), 89 Fed. Reg. at 693.

¹⁸ *See id.* at 607-08.

¹⁹ *Id.* at 607.