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Washington, DC 20548

B-336183

April 3, 2024

The Honorable Maria Cantwell  
Chair  
The Honorable Ted Cruz  
Ranking Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Cathy McMorris Rodgers  
Chair  
The Honorable Frank Pallone, Jr.  
Ranking Member  
Committee on Energy and Commerce  
House of Representatives

Subject: *Federal Trade Commission: Combating Auto Retail Scams Trade Regulation Rule*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Trade Commission (FTC) titled "Combating Auto Retail Scams Trade Regulation Rule" (RIN: 3084-AB72). We received the rule on March 19, 2024. It was published in the *Federal Register* as a final rule on January 4, 2024. 89 Fed. Reg. 590. The rule has a stated effective date of July 30, 2024. However, in its submission to us, FTC stated that the effective date of this final rule is currently stayed pending court proceedings.

According to FTC, this final rule is related to the sale, financing, and leasing of covered motor vehicles by covered motor vehicle dealers. FTC stated that the final rule, among other things, prohibits motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, requires accurate pricing disclosures in dealers' advertising and sales communications, requires dealers to obtain consumers' express, informed consent for charges, prohibits the sale of any add-on product or service that confers no benefit to the consumer, and requires dealers to keep records of certain advertisements and customer transactions.

Enclosed is our assessment of FTC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shari Brewster, Assistant General Counsel, at (202) 512-6398.

Shirley A. Jones  
Managing Associate General Counsel

Enclosure

cc: April J. Tabor  
Secretary of the Commission  
Federal Trade Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE  
ISSUED BY THE  
FEDERAL TRADE COMMISSION  
TITLED  
“COMBATING AUTO RETAIL SCAMS TRADE REGULATION RULE”  
(RIN: 3084-AB72)

(i) Cost-benefit analysis

The Federal Trade Commission (FTC) prepared an analysis of the cost and benefits of this final rule. FTC stated that it described the beneficial impacts of the final rule by providing quantitative estimates where possible, identifying quantitative benefits that cannot be estimated due to a lack of data, and describing benefits that can only be assessed qualitatively. According to FTC, the final rule would benefit consumers by saving them time as they complete motor vehicle transactions, reducing deadweight loss and reducing the discomfort and unpleasantness that consumers associate with negotiating motor vehicle transactions under the status quo. FTC stated that its analysis of the cost to industry includes a qualitative description of cost and quantitative estimates where possible. The discussion about cost addressed prohibited misrepresentations, the required disclosure of offering price in advertisements and in response to inquiry, disclosure of add-on list and associated prices, the required disclosure of total of payments for financing/leasing transactions, the prohibition on charging for add-ons that provide no benefit, the requirement to obtain express, informed consent before any charges, and recordkeeping requirements.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

FTC certified that the final rule will not have a significant economic impact on a substantial number of small entities. FTC also prepared a Final Regulatory Flexibility Analysis. The analysis included 1) a statement of the need for and objectives of the rule; 2) issues raised by comments, including comments by the Chief Counsel for Advocacy of the Small Business Administration, FTC’s assessment and response, and any changes made as a result; 3) a description and estimate of the number of small entities to which the final rule will apply or an explanation of why no such estimate is available; 4) a description of the projected reporting, recordkeeping, and other compliance requirements; and 5) a description of the steps FTC has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

As an independent regulatory agency, FTC is not subject to the Act.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for

administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

As an independent regulatory agency, FTC is not subject to the Act.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On July 13, 2022, FTC published a notice of proposed rulemaking. 87 Fed. Reg. 42012. FTC stated that it received more than 27,000 comments representing a wide range of viewpoints. FTC also stated that the commenters included consumers, dealerships and their employees, industry groups, consumer and community groups, federal and state lawmakers, and law enforcement agencies. FTC stated further that it has undertaken careful review and consideration of each of the comments it received, and it has dedicated most of its section-by-section analysis to descriptions of, and responses to, comments or portions thereof that were critical of the proposed rule or that urged FTC to adopt additional requirements.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

According to FTC, the disclosure and recordkeeping requirements of this final rule constitute a collection of information under PRA and FTC submitted it to OMB for review (OMB Control Number 3084-0172). FTC estimates the total annual burden of the collection of information to be 1,595,085 hours and the annual cost to be \$51,904,537. FTC also estimates the total annual capital and other non-labor cost to be \$14,181,300.

Statutory authorization for the rule

FTC promulgated this final rule pursuant to section 5519 of title 12, and section 41 *et seq.* of title 15, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

As an independent regulatory agency, FTC is not subject to the Order.

Executive Order No. 13132 (Federalism)

As an independent regulatory agency, FTC is not subject to the Order.