

ABBREVIATED: FEDERAL TRADE COMMISSION 16 CFR Part 463 RIN 3084–AB72 Motor Vehicle Dealers Trade Regulation Rule

(Footnotes removed for easier Reading! This is the abbreviated but unedited version of the FTC Rules. See underlined Text on Pages 4, 5, 6, & 7. Also highlight beforehand as needed)

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AGENCY: Federal Trade Commission. ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) proposed rules would prohibit motor vehicle dealers from making certain misrepresentations in the course of selling, leasing, or arranging financing for motor vehicles, require accurate pricing disclosures in dealers’ advertising and sales discussions, require dealers to obtain consumers’ express, informed consent for charges, prohibit the sale of any add-on product or service that confers no benefit to the consumer, and require dealers to keep records of advertisements and customer transactions.

There was a comment period which ended September 12, 2022.

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SUPPLEMENTARY INFORMATION:

I. Background Buying or leasing a motor vehicle

Is, for many consumers, both essential and expensive. Millions of Americans depend on vehicles for daily living, with recent data showing that over 95% of American households own at least one motor vehicle, and nearly 84% of Americans drive to work as of 2020. Americans rely on their vehicles for work, school, childcare, groceries, medical visits, and many other important tasks in their daily lives.

This necessity does not come cheap: a new vehicle is the second-most expensive purchase many consumers make, falling only behind purchasing a home. For purchases at new car dealerships, the average new vehicle now sells for more than \$42,000, and the average used vehicle sells for more than \$26,000. All told, Americans spent more than \$2.8 trillion dollars on motor vehicles and vehicle parts in 2021. Given how expensive it can be to buy a vehicle, many consumers rely on financing to complete their purchases. Indeed, according to public reports, 81% of new motor vehicle purchases, and nearly 35% of used vehicle purchases, are financed. The motor vehicle financing market is the third largest consumer credit market in the United States, after mortgages and student loans.

By the end of 2021, Americans had more than 111 million outstanding auto loans, and owed more than \$1.46 trillion thereon. Motor vehicle financing is the third-largest source of debt for U.S. consumers under the age of 50, and the second-largest source of debt for those 50 and

older. Buying or leasing a vehicle is not only an expensive endeavor, but the transaction itself is time-consuming and arduous. Consumers who purchase vehicles at a dealership may spend five hours or more—or even days—doing so. And that does not include the time spent visiting dealerships when consumers do not make purchases, or the hours it can take to travel to the dealerships themselves. Consumers may need to take time off work and arrange daycare or take young children to the dealership, and the process can be especially taxing for one-vehicle families who also need their vehicle for commuting and day-to-day tasks like buying groceries and attending medical appointments. The Commission, the nation’s consumer protection agency, is charged with enforcing key laws and regulations applicable to the motor vehicle marketplace, including sales, financing, and leasing.

The FTC protects consumers in motor vehicle transactions through law enforcement actions, rulemaking, consumer education, and business guidance, aided by information-gathering efforts such as agency roundtables and industry research. In the past ten years, the FTC has brought more than 50 motor vehicle related enforcement actions, including matters involving misleading motor vehicle advertising, financing paperwork falsification, “yo-yo” financing, deceptive and unfair add-on fees, discrimination, and privacy and data security issues.

At the same time, the FTC has conducted a qualitative study of consumer experiences and hosted public events to engage in a dialogue with consumer and dealer groups and other stakeholders, gather information, spotlight misleading practices, and raise awareness of issues that can affect consumers in this space, including consumers who are servicemembers. The FTC also has posted many educational materials to assist consumers and dealers on motor vehicle market issues, and we have worked collaboratively with industry groups to do the same.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“DoddFrank Act”) was signed into law in 2010. Section 1029 of the Dodd-Frank Act authorizes the FTC to prescribe rules with respect to unfair or deceptive acts or practices by motor vehicle dealers, and to do so pursuant to the Commission’s authority under the FTC Act and in accordance with the Administrative Procedure Act (“APA”).²⁰ Although it has engaged in law enforcement, the Commission’s relatively small size and limited resources make it challenging to investigate and act upon the tens of thousands of complaints regarding dealerships. As discussed below, many of the problems observed in the motor vehicle marketplace persist in the face of repeated federal and state enforcement actions, suggesting the need for additional measures to deter deceptive and unfair practices.

In addition, a rule prohibiting unfair or deceptive acts or practices in the motor vehicle marketplace would allow the FTC to seek redress for harmed consumers and obtain other forms of monetary relief in cases involving FTC Act violations. Further, law-abiding dealers suffer when other dealers gain business through deceptive or unfair means. For all these reasons, the Commission believes it is appropriate to utilize its rulemaking authority to issue a rule to address unfair or deceptive acts or practices in the motor vehicle marketplace.

I. Overview of Vehicle Dealers and Motor Vehicle Financing

A. New and Used Motor Vehicle Dealerships There are more than 21,000 new motor vehicle dealerships across the country. Collectively, these dealerships sold more than 17 million new vehicles per year in each of the past three years, averaging more than 800 new vehicle sales per dealership per year.²⁴ New-vehicle dealers spend an average of more than \$600 on advertising per vehicle sold²⁵—more than half of which goes toward online advertising. According to industry sources, these dealers averaged a gross profit of about \$2,444 per vehicle. More than half of this profit came from the dealers' financing and insurance, or "F&I", offices, which sell consumers financing and leasing, as well as add-on products and services such as vehicle service contracts.

There are more than 25,000 used motor vehicle dealerships across the country, and used vehicle sales are nearly evenly split between new and used car dealerships. Used vehicles sold by new-vehicle dealerships cost \$24,542 on average. These vehicles brought in an average gross profit of about \$2,675 per vehicle, more than a third of which came from the F&I office. Independent used vehicle dealerships sold an average of 684 vehicles per dealership in 2019, with an average gross profit of more than \$6,000 per vehicle. While some independent used vehicle dealerships do not have a separate F&I office, more than half of them sell add-on products.

B. Motor Vehicle Financing and Leasing Overview

Consumers can finance the purchase or use of a vehicle in several ways. Those interested in purchasing a vehicle generally use either indirect financing or direct financing.

Others—particularly those with thin or damaged credit—work with a so-called "buy here, pay here" dealership for financing, typically without the involvement of an outside financing entity.³⁵ Finally, some consumers opt to lease a vehicle rather than purchase it. Approximately 70 percent of consumers use dealer-provided indirect financing at the dealership. In this scenario, the dealership collects financial information on the consumer and forwards that information to prospective financing entities. These financing entities, who work with the dealer, evaluate that information and in the process determine whether, and on what terms, to provide credit. These terms include the "buy rate," a risk based finance charge that reflects the interest rate at which the entity will finance the deal. Dealers often add a finance charge called a "dealer reserve" or "markup" to the buy rate. Unlike the buy rate, the markup is not based on the underwriting risk or credit characteristics of the applicant. Alternatively, those who use direct financing apply for and obtain financing directly from a credit union, bank, or other financing entity. These consumers typically receive an interest rate quote from the entity prior to arriving at a dealership to purchase a vehicle. Then, once these consumers agree to purchase a vehicle, they can use the financing from the entity to pay for the vehicle.

Dealerships do not profit on the financing portion of the transaction when a consumer arranges financing directly. "Buy here, pay here" dealers typically finance their motor vehicle sales in house rather than routinely assigning their financing to unaffiliated parties. That means consumers borrow from and make their payments directly to the dealership. Interest rates for this financing are usually much higher than for direct or indirect financing, and consumers

default on this financing at a high rate. The dealer often performs its own collections and repossession operations when consumers fall behind. “Buy here, pay here” accounts for 6–8% of financing to purchase a vehicle.

Leasing involves arranging to drive a vehicle for a set period of time— typically around three years —and for a certain maximum number of miles— typically 10–15,000 miles per year—in exchange for an upfront payment, a monthly payment, and fees before, during, and at the end of the lease, including for excess wear and usage over the mileage limit. When consumers lease a vehicle, they do not own it, and they must return the vehicle when the lease expires, though they may have the option to purchase the vehicle at the end of the lease period. Nearly 27% of new vehicles are leased, as are just over 8% of used vehicles.

II. Deception and Unfairness in the Motor Vehicle Marketplace

For many consumers, buying or leasing a vehicle is a difficult and time consuming experience. The process of shopping for a vehicle, conducting test drives, providing financing information, and completing stacks of paperwork at a dealership can take many hours or even days, and can involve unfair or deceptive practices.

The FTC received more than 100,000 complaints in each of the past three years regarding new and used motor vehicle sales, financing, service & warranties, and rentals & leasing, and complaints about motor vehicle transactions are regularly in the top ten complaint categories tracked by the agency. The FTC uses its authority under Section 5 to stop deceptive and unfair acts or practices in the motor vehicle marketplace. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers—that is, it would likely affect the consumer’s conduct or decisions with regard to a product or service. Some deception cases involve omission of material information, the disclosure of which is necessary to prevent the claim, practice, or sale from being misleading. Deceptive information distorts the marketplace and thus, these false and misleading statements are unlawful regardless of an intent to deceive.

A practice is considered unfair under Section 5 if: (1) it causes, or is likely to cause, substantial injury; (2) the injury is not reasonably avoidable by consumers; and, (3) the injury is not outweighed by benefits to consumers or competition.⁵⁶ Chronic problems confronting consumers in the sales, financing, and leasing process include advertising misrepresentations and unlawful practices related to add-ons and deceptive pricing.

A. Advertising Misrepresentations

Advertisements for motor vehicles are often consumers’ first contact in the vehicle-buying or leasing process. Dealers utilize a variety of means to reach consumers, including television and radio commercials, social media and online advertisements, and direct mail marketing. The FTC has brought many cases concerning misrepresentations regarding key pricing aspects of a vehicle purchase, including the price of the vehicle, the availability of discounts and rebates, the monthly payment amount for a financed purchase or lease, or the amount due at signing.

Other misrepresentations regarding financial terms that have been the subject of FTC complaints have included whether an offer pertains to a purchase or a lease and whether the dealer or consumer is responsible for paying off “negative equity,” i.e., the outstanding debt on a vehicle that is being traded in as part of another vehicle purchase. And according to other FTC actions, some dealers have lured potential buyers through financial incentives incidental to the purchase, such the promise of a valuable prize. Misleading advertisements can cause significant consumer harm, and reduce competition amongst law-abiding dealers. When dealerships advertise prices, discounts, or other terms that are not actually available to typical consumers, those consumers end up selecting that dealership instead of others and spending time visiting it and transacting with it under false pretenses.

B. Unlawful Practices Relating to AddOns and Deceptive Pricing Another key consumer protection concern is the sale of “add-on” products and services in a deceptive or unfair manner. Commonly offered add-ons include **extended warranties, service and maintenance plans, payment programs, guaranteed automobile or asset protection (“GAP” or “GAP insurance”), emergency road service, VIN etching and other theft protection devices, and undercoating.**

Individual add-ons can cost consumers thousands of dollars and can significantly increase the overall cost to the consumer in the transaction. A significant consumer protection concern is consumers paying for add-ons without knowing about or expressly agreeing to them.

The protracted and paperwork-heavy vehicle-buying process can make it difficult for consumers to spot add-on charges, particularly when advertised prices do not mention add-ons. If consumers are financing the vehicle, they then undergo a separate financing process, which can include wading through a thick stack of dense paperwork filled with fine print.

For example, according to an FTC complaint, consumers were required to complete a stack of paperwork that ran more than sixty pages and required more than a dozen signatures. This paperwork can include hidden charges for add-on products and services, causing consumers to purchase those add-ons without knowing about or agreeing to them, or without knowing or agreeing to their costs, or other key terms.

Unscrupulous dealers are able to slip these additional costs past consumers unnoticed and into purchase contracts through a variety of means, including by not mentioning them at all, or by focusing consumers’ attention on other aspects of the complex transaction, such as monthly payments, which might increase only marginally with the addition of prorated add-on costs or even be made to decrease if the financing term is stretched out, while in fact these added costs can be considerable in aggregate.

Dealers engaging in this type of conduct have targeted immigrants, communities of color, and servicemembers. In other instances, dealers might wait until late in the transaction to mention add-ons, and then do so in a misleading manner.

For example, according to an FTC study, there were situations where dealers waited until the financing stage to mention add-ons, after consumers believed they had agreed on terms, and even though many add-ons have nothing to do with financing and were not mentioned at all during the sales process or when prices were initially negotiated. According to FTC enforcement actions, dealers also have represented that add-ons are required when in fact they are not, have misrepresented the purported benefits of add-ons, and have failed to disclose material limitations. Indeed, in a recent enforcement proceeding brought by the FTC, the agency cited a survey finding that 83% of consumers from ten dealership locations within the same motor vehicle dealership group—the thirteenth largest dealership group in the country in 2020, as ranked by total revenue—were charged for add-on products or services that they did not authorize or as a result of deceptive claims that they were required to purchase them.

One participant in an FTC qualitative study of consumers' car buying experiences summed up these issues during an interview after having purchased a vehicle. The consumer purchased a \$2,000 service contract that the dealer falsely said was free, and a \$900 GAP insurance contract that the dealer falsely said was mandatory, and learned about these purchases during the study interview. This consumer remarked: I feel I've been taken advantage of, to be honest with you. Even though I thought that I was getting a great deal with the interest rate, but I now see that they're also very sneaky about putting stuff on your paperwork. They only let you skim through the paperwork that you have to sign and they just kind of tell you what it is. This is this, this is that, this is this, and then you just sign it away. You're so tired, you're so worn down, you don't want to be there no more. You just want to get it done and over with. They take advantage of that. Yes, they still play this friendly card, you know, thank you for your business card kind of thing. Like I said, they never lose. They never lose.

III. Law Enforcement Actions and Other Responses

To address these types of unfair and deceptive practices in the motor vehicle industry, the Commission has brought enforcement actions and engaged in other efforts.

In the last ten years, the Commission has brought more than fifty law enforcement actions and led two law enforcement sweeps to protect consumers in the motor vehicle marketplace, including one that involved 181 state enforcement actions. To complement its law enforcement efforts, the FTC's Bureau of Consumer Protection and the Bureau of Economics recently published two reports on the results of a qualitative study on consumer experiences while purchasing a motor vehicle. The study found that many participating consumers were left in the dark about key terms. Consumers recalled dealers renegotiating vehicle prices at different stages of the transaction and being confused about the price of the vehicle. Despite the lengthy transaction, many study participants felt review of the final documents was rushed and were surprised to learn of additional add-on charges in their contracts. These are long-standing issues.

In 2011, the agency reached out to consumers through three motor vehicle roundtable events, reviewing over 100 comments from industry representatives, consumer advocates, and state enforcement agencies, among others who attended. Through these events and comments,

consumers expressed confusion regarding aspects of the financing process and commented that they were surprised when they reached the dealership that the price advertised was not available to them. The Commission's law enforcement partners have also brought actions addressing unfair and deceptive practices in the motor vehicle industry.

For example, the Consumer Financial Protection Bureau has taken action against third-party motor vehicle financing entities in matters that raise similar, and sometimes identical, claims of deceptive and unfair practices as were at issue in FTC cases.

States have also taken measures to address consumer protection issues in the motor vehicle industry. In addition to participating in law enforcement sweeps with the FTC, state regulators and Attorneys General have independently filed more than 200 actions alleging deceptive and unlawful conduct by motor vehicle dealerships across the country. Some states have also taken legislative or regulatory action. For example, to "ensure that dealers do not add in hidden or undisclosed costs after the price for a vehicle has been advertised," Oregon promulgated a rule that requires dealerships to state an "offering price" which is the actual offer and amount the consumer can pay to own the vehicle, excluding only taxes, license, registration costs, environmental fees, and a document processing fee. California and Wisconsin have similarly enacted codes that make it unlawful for dealerships to advertise a total price without including additional costs to the purchaser outside the mandatory tax, title, and registration fees. Other states, like Indiana, have enacted codes that prohibit the sale of add-ons in certain circumstances.

IV. Section-by-Section Analysis

Based on its enforcement and other experience, the Commission proposes specific legal restrictions to address deceptive and unfair conduct by motor vehicle dealers. Thus, the Commission is proposing a rule requiring dealers, whether acting directly or indirectly, to refrain from misrepresentations, provide for material disclosures at key points in the transaction, refrain from the sale of deceptive or unfair add-on products, and require retention of dealers' advertisements and consumer transaction documents.

While the proposed rule is an important step in the effort to prevent harm to consumers in the motor vehicle marketplace, purchasing, financing, and leasing motor vehicles. The Commission also intends to continue its constructive engagement with consumer and dealer groups and other stakeholders. The Commission invites written comments on the proposed rule, and, in particular, answers to the specific questions set forth below comprehensive approach is needed to address the important consumer protections at issue. Therefore, in addition to this rulemaking initiative, the Commission intends to continue law enforcement, as well as its consumer education and other efforts, to ensure that consumers can make informed decisions about.

A. Section 463.1: Authority Proposed 463.1 identifies the statutory authority under which the Commission proposes to promulgate this Rule to prevent unfair or deceptive acts or practices in connection with the sale, lease, or financing of motor vehicles.

B. Section 463.2: Definitions Proposed 463.2 contains definitions for the following terms: “Add-on” or “Add-on Product(s) or Service(s),” “Add-on List,” “Cash Price without Optional Add-ons,” “Clearly and Conspicuously,” “Dealer” or “Motor Vehicle Dealer,” “Express, Informed Consent,” “GAP Agreement,” “Government Charges,” “Material” or “Materially,” “Motor Vehicle,” and “Offering Price.” Each of these terms is used in the proposed rule.

C. Section 463.3: Prohibited Misrepresentations

Section 463.3 of the proposed rule would prohibit motor vehicle dealers from making certain misrepresentations, to address the deceptive practices surrounding motor vehicle transactions discussed above and emerging from the landscape of enforcement actions, workshops, industry and consumer studies, and consumer interviews and complaints. As discussed in Section III above, a representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers. This section seeks to prohibit deceptive representations to consumers, clarify dealers’ obligations under the law, and ensure that motor vehicle dealers compete on a level playing field.

The prohibited misrepresentations in this section of the proposed rule are material because they are likely to affect a consumer’s choices, such as whether to visit a particular dealership or enter into a transaction. These misrepresentations also harm consumers and divert business from reputable dealerships that provide truthful advertising to consumers.

Consumers who select and travel to dealerships based on an advertised offer, only to learn late in the process (if at all) that the advertised offer does not apply, have often spent hours trying to purchase a car. Even if they notice and successfully resist later-added fees, or leave after learning that advertised discounts and rebates do not apply to them, misleading advertisements cause them to waste hours driving to and visiting the dealership.

For many consumers, however, walking away is not a realistic option—for example, restarting the hours-long process at another dealership might mean having to take an additional day off work, and for those who cannot afford a second car, finding other means of transportation to travel to another dealership. Thus, even if they somehow learn that they are paying more than what was advertised, consumers might just sign the deal rather than start the entire process anew. In other instances, as discussed below, consumers learn that they did not receive the offer as represented only after they enter into the contract and end up spending hundreds or even thousands of dollars more than they were led to believe.

Section 463.3(a) of the proposed rule would prohibit misrepresentations concerning “the costs or terms of purchasing, financing, or leasing a vehicle.” This provision would bar deceptive practices surrounding, among other things, the total cost, price for added features, other charges, terms and finality of financing, and availability of discounts. The cost or price of a vehicle is material—it is likely to affect a consumer’s conduct, including whether to purchase a particular vehicle at a particular dealership. Section 463.3(b) of the proposed rule would prohibit misrepresentations concerning any “costs, limitation, benefit, or any other Material aspect of an Add-on Product or Service.” As discussed above, add-ons are a particularly problematic area in

auto sales and financing. The cost and coverage of an add-on is likely to affect a consumer's conduct, including the consumer's decision to purchase the product or service. Section 463.3(c) of the proposed rule would prohibit misrepresentations regarding "whether the terms are, or transaction is, for financing or a lease." If a dealer advertises vehicles for low monthly payments or other terms that apply in financing offers, but the offer is actually for a lease only, that conduct misleads consumers. These representations are likely to affect consumers' conduct, including by causing consumers to enter into a monetary transaction for a product they do not want (borrowing instead of owning), or, if the true circumstances are revealed prior to consummation of the transaction, to waste time traveling to the dealership and potentially spending hours on the sales floor and financing office.

Section 463.3(d) of the proposed rule would prohibit misrepresentations concerning "the availability of any rebates or discounts that are factored into the advertised price but not available to all consumers." When dealers advertise rebates and discounts, or offer prices that factor in such rebates and discounts, but in fact those rebates and discounts are not available to the typical consumer, but only a select set of customers, such conduct induces the consumer to select and transact with the dealer under false pretenses.⁹⁴ In other instances, the advertised rebates and discounts might apply only to the most expensive versions of the make and model. Consumers may learn they do not qualify for these advertised rebates or discounts, if at all, only after they spend time traveling to the dealership or at the end of the financing stage. Section 463.3(e) and (f) of the proposed rule would prohibit misrepresentations surrounding "the availability of vehicles at an advertised price" and representations that a consumer has been or will be "preapproved or guaranteed for any product, service, or term." This provision would prohibit dealers from first touting low prices or other attractive terms for specific vehicles and inducing consumers to spend time traveling to the dealership and pursuing the offer, but then claiming, among other things, that the advertised vehicle is no longer available, no longer available at the advertised price, or that the financing offer is only available to those with high credit scores. To the extent that dealers are advertising prices, preapprovals, guaranteed rates, or other terms for military consumers, but then charging the same prices to other consumers or otherwise failing to honor the deal, the proposed rule would cover such conduct as well. This information is material because it is likely to affect consumers' conduct, including whether to spend time traveling to a particular dealership and pursuing a specific offer on a specific car. Section 463.3(g) of the proposed rule would prohibit dealers from misrepresenting "any Material information on or about a consumer's application for financing."

Material misrepresentations on or about a consumer's financing application include instances in which dealers submit income information that is different from what consumers have stated that they earn, or alter the down payment amount from what the consumer has actually provided.⁹⁸ Section 463.3(h) and (i) of the proposed rule would prohibit dealers from misrepresenting "when the transaction is final or binding on all parties" and making misrepresentations about "keeping cash down payments or trade-in vehicles, charging fees, or initiating legal process or any action if a transaction is not finalized or if the consumer does not wish to engage in a transaction." These provisions are intended to curb yo-yo financing, which occurs when a dealer obtains a consumer's agreement to a deal that has not been finalized, allows the consumer to drive the

vehicle off the lot, and then directs the consumer to return and engages in unlawful tactics, such as failing to give back a consumer's trade in vehicle, while refusing to honor the deal or pressuring the consumer into entering a new deal. Yo-yo financing is often made possible because a dealer misleads consumers, directly or by omission, about whether their financing is final, and subsequently applies pressure when revealing that the financing is not final, including by threatening to retain the consumer's cash down payment or trade-in vehicle unless the consumer agrees to a new financing contract. These tactics affect consumer conduct, including whether to enter into a new deal with less beneficial terms for the consumer. Several states have enacted statutes to protect consumers against this practice.

Section 463.3(j) of the proposed rule would prohibit misrepresentations regarding "whether or when a Motor Vehicle Dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle." This provision would prohibit dealers from misrepresenting to consumers trading in a vehicle when the consumer owes more than the vehicle is worth, that the dealer will pay off that negative balance or negative equity when the consumer purchases a new vehicle. If the dealer does not pay off the negative balance but rather includes it in the new amount to be financed for the vehicle to be purchased, this sleight of hand (often buried in the financing paperwork) requires the consumer, not the dealer, to pay off the previous financing as promised. This provision would also prohibit dealers that are going out of business from representing that they will pay off liens if they do not, in fact, pay off the liens, and prohibit them from failing to pay off liens in a timely manner. This information is material because information about the amount the consumer is actually paying or will end up owing is likely to affect the consumer's decision to visit a particular dealership and purchase a particular vehicle. Section 463.3(k) of the proposed rule would prohibit misrepresentations that consumer reviews or ratings are unbiased, independent, or from ordinary consumers, and § 463.3(l) of the proposed rule would similarly prohibit misrepresentations that "the Dealer or any of its personnel or misrepresentations that they may repossess a vehicle, when they cannot. For example, the Servicemembers Civil Relief Act prohibits repossession of vehicles during a servicemember's period of military service without a court order as long as the servicemember either placed a deposit for the vehicle, or made at least one installment payment on the contract before entering military service. Thus, this provision would prevent dealers from representing that they could repossess military consumers' vehicles under these circumstances. Information about when a vehicle may be repossessed is likely to affect a consumer's conduct, including the consumer's conduct regarding which payments to prioritize while serving our country. Section 463.3(p) of the proposed rule would prohibit misrepresentations of "[a]ny of the required disclosures identified in this part," including but not limited to representations that limit or contradict the required disclosures. This prohibition against misrepresentations complements the disclosure requirements in the proposed rule.

D. § 463.4: Disclosure Requirements

Section 463.4 of the proposed rule would require key disclosures by dealers. The proposed rule would require that such disclosures be made in a clear and conspicuous manner, but would not prescribe the form that such disclosures must take. Proposed § 463.4(a) through (e) would require disclosures regarding pricing and certain financing information. Providing consumers

with accurate and timely pricing and financing information is critical, especially in the context of motor vehicle sales and leasing, where such information has proved singularly confusing to consumers.¹⁰⁶ Such confusion is heightened when, as discussed above, advertisements list vehicle prices that are lower than that at which the dealer will sell or lease the vehicle, including because of incremental charges and fees added to an hours-long transaction as it develops. Misleading and false price and financing information hinder consumers' ability to comparison shop, an essential element to a competitive market. If buyers can see and compare the actual prices and costs for the same or similar goods offered by different sellers, buyers can choose to visit the seller that offers the terms most important to them, instead of wasting time and expense exploring offers based on deceptive information. When price or cost information in the market are distorted, consumers are unable to effectively differentiate between sellers, and sellers trying to deal honestly with consumers are put at a competitive disadvantage.

Proposed 463.4(a) would require a motor vehicle dealer to disclose the true "Offering Price" of a vehicle in advertisements that reference specific vehicles or price or financing terms. Under the proposed rule, the "Offering Price" of a vehicle means "the full cash price for which a dealer will sell or finance the motor vehicle to any consumer," excluding only required government charges." This provision would prohibit deceptive and unfair practices with respect to price and add-ons. Price is one of the most material pieces of information for a consumer in making an informed purchasing decision. Yet it is difficult for consumers to uncover the actual price for which a dealer will sell an advertised vehicle until visiting the dealership and spending hours on the lot. Sometimes dealers will tout prices based on dealer discounts, rebates, or other price reductions when such benefits are in fact subject to hidden or undisclosed restrictions that render them unavailable to typical customers.

Other times, dealers hide or omit additional dealer charges, such as for document preparation fees, amounting to several hundred dollars. It is deceptive for dealers to advertise a price without disclosing material limitations or additional charges required by the dealer that are fixed and thus can be readily included in the price at the outset. These practices are also unfair because they are likely to cause substantial injury: Consumers lose time when they pursue offers that are not actually available, and they may end up paying more for a vehicle than they expected, either because unexpected charges are not adequately disclosed until late in the transaction, or are never disclosed at all. By requiring disclosure of the true Offering Price upfront, 463.4(a) aims to curb this deceptive and unfair conduct, while producing the corollary benefit of increasing price competition among dealers, who would be able to compete on truthful, standard terms.

Specifically, § 463.4(a) would require disclosure of the Offering Price when dealers advertise a specific vehicle for sale as well as when any monetary amount or financing term is advertised. This provision would further require that, upon receipt of a consumer inquiry about a specific vehicle or price or financing term for any vehicle, the dealer must disclose the Offering Price of that vehicle, and that if any part of such an inquiry or response is made in writing, the Offering Price must be disclosed in writing as well. This provision would require dealers to provide accurate information to consumers, including those beginning their vehicle-shopping process

online and those selecting a dealership based on price. Inaccurate price information is likely to cause substantial injury for consumers who waste time traveling to the dealership in pursuit of an offer that does not exist, and for consumers who never learn that unexpected charges have been added to their dense paperwork during the hours-long vehicle buying and financing process. Section 463.4(b) would require dealers to provide consumers with information about optional add-on charges to help curb deceptive and unfair practices. As discussed in Part III.B above, misrepresenting that add-ons are required or charging for add-ons without consumers' Express, Informed Consent are significant consumer protection concerns. Section 463.4(b) would require disclosure on any website, online service, or mobile application on which vehicles are offered for sale, of a list of all optional add-ons and the price of each add-on ("Add-on List"). The Add-on List would have to include all optional add-on products for which the dealer charges consumers (and their respective prices). If the price of the add-on varies based on the specifics of the transaction, the Add-on List would have to include the range the typical consumer will pay. Due to space constraints, dealer advertisements presented not online but in another format—such as in print, radio, or television—would not be required to include the Add-on List. Instead, pursuant to § 463.4(b)(2), those advertisements would be required to disclose the website, online service, or mobile application where consumers can access a copy of the Add-on List. This proposed provision is consistent with industry guidance and would help ensure that dealers that follow such guidance will not be competitively disadvantaged relative to those that do not. For optional add-on products and services, proposed

463.4(c) would require dealers to disclose that the optional add-on product or service is not required and that a consumer can purchase or lease the vehicle without the add-on.

This disclosure would curb the deceptive practice of misleading consumers into thinking an add-on is required when it is not. As with proposed § 463.4(b), this proposed provision is consistent with industry guidance and would avoid competitive disadvantage to those dealerships that follow such guidance. Section 463.4(d) would require dealers to disclose the total of payments when quoting monthly payment amounts to a prospective buyer or lessee. Specifically, § 463.4(d) would prohibit motor vehicle dealers from making any representation about a monthly payment for any vehicle without disclosing the total amount the consumer will pay to purchase or lease the vehicle at that monthly payment amount after making all monthly payments; if that total amount assumes consideration provided by the consumer (e.g., a cash down payment or a trade in), those amounts must also be disclosed.

Section 463.4(e) would complement the preceding provision by requiring dealers, when they compare different monthly payment options with consumers, to inform consumers that a lower monthly payment will increase the total amount the consumer will pay, if true. These provisions are intended to prohibit dealers from using claims regarding monthly payment amounts to falsely imply savings or parity between different offers where reduced monthly payments increase the total vehicle cost due to an increased payment term, and potentially an increased annual percentage rate ("APR") as well. Additionally, when a consumer pays for his or her vehicle over a longer period of time, there is an increased likelihood that the consumer will continue to owe money even after he is no longer driving the vehicle. This results in negative equity when the consumer needs or wants to purchase another vehicle, because a vehicle's

value tends to decline faster than the amount owed. Longer motor vehicle financing terms also have higher rates of default, potentially posing greater risks to both borrowers and financing companies.

Take, for example, a borrower who finances the purchase of a \$25,000 vehicle with a \$5,000 down payment and a 10% APR. With a five-year (60-month) term, her monthly payment will be \$425. If the consumer balks at that monthly payment, the dealer could quote her a lower monthly payment of \$332. If, however, the down payment and APR stay the same, that would result in a seven-year (84-month) term. Although the second offer might appear to be less costly, it will result in the consumer paying \$2,394 more in interest over the course of the longer financing term. The second offer would also obligate the buyer to make payments for two additional years; if she needed to shop for a new vehicle after 60 months, she would still owe an outstanding balance of \$7,195 on the first vehicle.¹²³ As discussed further below, singular focus on monthly payments can also make consumers susceptible to unwanted, undisclosed, or even fictitious add-on charges and fees, because consumers may not notice relatively small add-on charges secreted within a monthly payment (e.g., \$15). Such hidden charges can cost a consumer more than a thousand dollars over the course of an auto financing or lease term.

Further, when dealers advertise deceptively low monthly payments that amount to a fraction of the total cost of the vehicle, consumers may end up owing a large balloon payment in addition to the advertised monthly payment amount, either at signing or after finishing their monthly payments, or may be required to pay a much higher monthly payment once the artificially low “teaser rate” expires. The Commission anticipates that the proposed rule’s requirement that dealers must disclose the total cost of a vehicle when quoting monthly payment amounts to a prospective buyer will help prospective buyers make more informed purchasing decisions and curb these deceptive and unfair practices. Similarly, by requiring that dealers disclose that a lower monthly payment amount will increase the vehicle’s total cost, when true, consumers will be able to gauge how much a given financing or lease offer will ultimately cost in order to compare different offers. This will help to decrease the likelihood that a consumer will be deceived about the comparative cost of a financing or lease offer, and help prevent dealers from including optional add-on products or services without the consumer’s Express, Informed Consent. These proposed provisions do not conflict with “triggering term” requirements under other federal rules, including Regulation Z (of the Truth in Lending Act) and Regulation M (of the Consumer Leasing Act)

Taken together, provisions 463.4(a) through (e) are intended to curb deceptive and unfair conduct related to pricing and add-ons. As discussed above, consumers are presented with a high volume of dense information during the long and complex motor vehicle buying or leasing experience. In some cases, prospective buyers receive conflicting information or are not provided key information, or fully informed about applicable charges. These practices harm consumers who may incur time and expense during the vehicle-shopping process or incur unexpected costs when dealers tout artificially low costs and other incentives in advertising and during negotiations, only revealing that those deals are not available late in the buying process, if at all. For example, participants in the FTC’s qualitative Auto Buyer Study encountered

situations where dealers settled on a price with them on the sales floor, but later a financing representative revoked the agreed upon price, claiming that it could not be honored. Dealer control over the flow and timing of information enables them to add charges or change contract terms late in the purchase or lease process. In some instances, after consumers have spent hours traveling to the dealership and then on the lot (perhaps after already having spent hours comparing prices and features online), dealers present a large pile of paperwork and give consumers little time to review it. As a result, consumers are unaware that charges have been added or promised discounts or benefits have been removed. In other instances, consumers learn about additional charges or changes to their terms after they have invested substantial time and energy in the buying or leasing process. Requiring that consumers receive clear pricing disclosures early in the process will curb situations where consumers face unexpected charges at the end of the vehicle-buying process.

E. § 463.5: Dealer Charges for Add-Ons and Other Items

Section 463.5 of the proposed rule would prohibit charging for add-on products that provide no benefit to the consumer and would prohibit charging consumers without Express, Informed Consent. Add-on products and services are commonly offered by dealers in conjunction with vehicle financing or leasing, and these products and services make up a significant share of dealers' profits. In some cases, dealers appear to charge for add-on products or services under circumstances in which the consumer could never benefit from that product or service. However, charging for non-beneficial products is inconsistent with industry guidance, and dealerships that profit from such sales put honest dealerships at a competitive disadvantage.

Proposed § 463.5(a) would prohibit this practice. A dealer would be in violation of this provision if, for example, the dealer offered and charged for products such as “rustproofing” that did not actually prevent rust, offered purported theft-prevention or theft recovery services without proof that the services actually prevented theft or recovered stolen items, or charged for “nitrogen-filled tires” that in fact contained no more nitrogen than naturally exists in the air. A dealer would also violate this provision if the dealer sold GAP insurance to buyers whose financing balance was so low that ordinary insurance would be adequate to cover any loss. Further, the proposed restriction would prohibit the sale of GAP insurance when hidden restrictions would exclude a vehicle buyer from coverage (e.g., where the consumer's vehicle is among a list of vehicles excluded from coverage, or the consumer's neighborhood is excluded from coverage). Similarly, the proposed rule would prohibit other optional add-on products or services that offer consumers no benefit, including extended warranties that merely duplicate coverage already provided on the vehicle.

Consumers do not agree to purchase additional products from which they could not benefit unless they are led to believe, directly or by omission, that these products would be beneficial. Rather than requiring an additional, confusing disclosure—e.g., that the dealer is charging extra for an item that will not provide the consumer any benefit—this provision would prevent dealers from being able to extract additional charges from consumers based on deception. Accordingly, and similar to provisions enacted by a number of states,

463.5(a) of the proposed rule would prohibit motor vehicle dealers from marketing or selling an add-on product or service if the consumer would not benefit from such an add-on product or service. Section 463.5(b) of the proposed rule would curb the practice of charging for optional add-ons without the consumer's consent or misrepresenting that an optional add-on is instead a required purchase. It would also prohibit dealers from changing pricing information in the financing office. Specifically, proposed § 463.5(b)(1) states that dealers may not charge for optional add-ons unless they disclose up front the cash price at which a consumer may purchase the vehicle without additional add-ons. The proposed rule would require that dealers disclose, and offer to close the transaction for, the Cash Price without Optional Add-ons, separately itemizing the Offering Price, any discounts, rebates, or trade-in valuation, and required government charges. If the prospective buyer declines to purchase the vehicle at that price, the dealer must obtain confirmation in writing, with the date and time recorded, signed by the consumer and a manager of the dealership. The dealer must retain this signed form to document that the dealer has provided the required Offering Price disclosure to consumers before including optional add-ons in a sales transaction. The Cash Price without Optional Add-ons disclosure and declination must be limited to the information required by this § , and cannot be presented together with any other written materials.

Proposed § 463.5(b)(2) would require similar disclosures in the context of financed transactions: dealers would not be permitted to charge for optional add-ons without disclosing, and offering to consummate the transaction for, the Cash Price without Optional Add-ons plus the finance charge, factoring in any cash down payment or trade-in valuation (and separately itemizing the components of the offer). If the consumer declines to finance the transaction for that amount, the dealer, as above, must obtain confirmation of that declination in writing. The disclosure and declination must be limited to the information required by this section, and cannot be presented with any other written materials Proposed § 463.5(b)(3) would require a dealer, before charging for any optional add-on, to disclose the cost of the transaction without any optional add-ons (whether the transaction is financed or not), and also disclose the charges for the optional add-ons selected by the consumer, separately itemized.

Section 463.5(c) of the proposed rule would prohibit motor vehicle dealers, in connection with the sale, financing, and leasing of vehicles, from charging consumers for any item without their Express, Informed Consent. "Express, Informed Consent" is defined as an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure, in writing, and also orally for in-person transactions, of the following: (1) what the charge is for; and (2) the amount of the charge, including, if the charge is for a product or service, all fees and costs to be charged to the consumer over the period of repayment with and without the product or service. The definition also provides nonexclusive examples of what is not considered Express, Informed Consent. First, documents with a mere signature or initials, or a form presented to a consumer with preprinted checkboxes, would not constitute Express, Informed Consent. Similarly, agreement obtained through any practice, such as a user interface or document, designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice, would not constitute Express, Informed Consent.

As discussed above, the length and complexity of motor vehicle transactions has created an environment ripe for deceptive or unfair conduct. Consumer complaints suggest some dealers have added thousands of dollars in unauthorized charges, including for add-ons consumers had already rejected. These issues are exacerbated when pre-printed consumer contracts automatically include charges for optional add-ons, when consumers are rushed through stacks of paperwork, or when they are asked to sign blank documents. This provision would help protect consumers from unfair or deceptive charges buried within lengthy contracts or stacks of paperwork.

In sum, the complexities and duration of a typical motor vehicle transaction, and the myriad problems observed in the industry, call for a means to obtain and record Express, Informed Consent to charges instead of simply collecting signatures or initials within dense paperwork. Other statutes and rules enforced by the FTC likewise include Express, Informed Consent requirements for consumer purchases, and similar provisions appear in Commission orders resolving charges that motor vehicle dealers or other sellers have levied unauthorized charges on consumers.

F. § 463.6: Recordkeeping The proposed rule also includes various recordkeeping requirements to help ensure compliance with the Rule's disclosure requirements. Section 463.6 of the proposed rule describes the types of records motor vehicle dealers must keep, and the time period for retention. Specifically, this provision requires motor vehicle dealers subject to the Rule to keep for a period of 24 months: all materially different advertisements, sales scripts, training materials, and marketing materials regarding vehicle price, financing, or leasing terms; all materially different copies of lists of add-on products and services; consumer transaction documents such as purchase orders, financing and leasing agreements (and related correspondence, including declination documents as required by the preceding section); records to show compliance with monthly payment disclosure and add-on sales requirements; written consumer complaints and consumer inquiries regarding add-ons or individual vehicles; and other records needed to demonstrate compliance with this Rule. These recordkeeping provisions are necessary to ensure dealers make required disclosures under the Rule. They will also assist the Commission in assessing dealers' compliance with the Rule and help to ensure its effectiveness. These recordkeeping obligations are consistent with and similar to requirements included in similar Commission disclosure rules, as tailored to individual industries and markets.

G. § 463.7: Waiver Not Permitted

Section 463.7 of the proposed rule provides that "any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this part constitutes a violation of this part." This provision would prevent attempts to circumvent provisions of the proposed rule, for example during the paperwork review process with consumers. This provision is modeled on a similar provision in the Mortgage Assistance Relief Services Rule.

IX. Rulemaking Procedures Pursuant to the Dodd-Frank Act, the FTC is authorized to prescribe rules under Section 553 of the Administrative Procedure Act (“APA”) 150 with respect to unfair or deceptive acts or practices by motor vehicle dealers as defined in Section 1029 of the Dodd-Frank Act.¹⁵¹ Under the Dodd-Frank Act, the FTC’s APA rulemaking authority became effective as of July 21, 2011, the designated “transfer date” established by the Treasury Department.¹⁵² Accordingly, the Commission is publishing this Notice of proposed rulemaking pursuant to Section 553 of the APA.

X. Paperwork Reduction Act The **Paperwork Reduction Act** (“PRA”), 44 U.S.C. 3501 et seq., requires federal agencies to seek and obtain Office of Management and Budget (“OMB”) approval before undertaking a collection of information directed to ten or more persons. The proposed rule contains disclosure and recordkeeping requirements that constitute “information collection requirements” as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the PRA. The Commission estimates that there are approximately 46,525 franchise, new motor vehicle and independent/used motor vehicle dealers in the U.S