



FEDERAL TRADE COMMISSION

16 CFR Part 463

RIN 3084-AB72

Combating Auto Retail Scams Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: On January 4, 2024, the Federal Trade Commission (“FTC” or “Commission”) published a Final Rule in the *Federal Register*, titled “Combating Auto Retail Scams Trade Regulation Rule” (“CARS Rule,” “Rule,” or “Final Rule”), in order to curtail certain unfair or deceptive acts or practices by motor vehicle dealers. The CARS Rule was to become effective on July 30, 2024. Because of a pending legal challenge, this document announces that the effective date of the Final Rule is delayed until further notice.

DATES: The effective date of the final rule adding 16 CFR part 463, published at 89 FR 590, January 4, 2024, is delayed indefinitely. The FTC will publish a subsequent notification in the *Federal Register* announcing the CARS Rule’s effective date.

FOR FURTHER INFORMATION CONTACT: Daniel Dwyer or Sanya Shahrabi, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 202-326-2957 (Dwyer), 202-326-2709 (Shahrabi), ddwyer@ftc.gov, sshahrabi@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background¹

On January 4, 2024, the Commission published a Final Rule in the *Federal Register*, titled “Combating Auto Retail Scams Trade Regulation Rule,” to curtail certain unfair or deceptive acts or practices by motor vehicle dealers. *See* 89 FR 590 (Jan. 4,

2024).² The CARS Rule was to become effective on July 30, 2024.

On or about January 5, 2024, the National Automobile Dealers Association and the Texas Automobile Dealers Association (“Petitioners”) filed a Petition for Review (“PFR”) in the United States Court of Appeals for the Fifth Circuit. *Nat’l Auto. Dealers Ass’n v. FTC*, No. 24-60013 (5th Cir. filed Jan. 5, 2024). On January 8, 2024, the Petitioners filed a motion with the Fifth Circuit seeking a stay of the Rule and expedited consideration of their PFR. Although Petitioners did not seek a stay from the Commission in the first instance as required by Rule 18(a)(1) of the Federal Rules of Appellate Procedure, the Commission has nonetheless reviewed Petitioners’ motion, construing it as though it were a stay request submitted under Commission Rule 4.2(d), 16 CFR 4.2(d).

The Administrative Procedure Act (“APA”) provides, in relevant part, that “[w]hen an agency finds that justice so requires, it may postpone the effective date of action taken by it, pending judicial review.” *See* 5 U.S.C. 705. The Commission believes the Rule will provide consumers with critical protections from auto retail scams, Petitioners’ challenges to the Rule lack merit, and undue delay in the Rule’s effective date will harm consumers and honest businesses. Petitioners’ arguments for a stay rest on mischaracterizations of what the Rule requires of covered motor vehicle dealers, including inaccurate claims that the Rule will require dealers to overhaul their practices and will substantially increase compliance 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—because honest dealers will no longer be at a competitive disadvantage relative to dishonest dealers. Nonetheless, Petitioners have created uncertainty through their assertions and suggestions that legally compliant dealers must make unnecessary changes to satisfy Petitioners’ misunderstandings of the Rule.

Additionally, Petitioners are seeking expedited consideration of the PFR, and, if that request is granted, the stay of the effective date should not postpone implementation of the Rule by more than a few months, if at all. Balancing the equities here, the Commission has determined it is in the interests of justice to stay the effective date of the Rule to allow for judicial review. Once the PFR's merits are resolved, the Commission will publish a document in the *Federal Register* establishing a new effective date.

II. Administrative Procedure Act

Notice and comment is not required when an agency delays the effective date of a rule under section 705 of the APA because such a stay is not substantive rulemaking; it merely maintains the status quo to allow for judicial review.³

To the extent that a delay in the effective date may be deemed a rule, such action is also exempt from notice and comment as a rule of procedure under 5 U.S.C. 553(b)(A).⁴ Alternatively, the Commission finds, for good cause, for the reasons stated above, that notice and solicitation of public comment regarding the delay of the effective date for the CARS Rule are impracticable, unnecessary, or contrary to the public interest pursuant to 5 U.S.C. 553(b)(B). Balancing the equities here, the Commission has determined that it is in the interests of justice to stay the effective date of the Rule to allow for judicial review.

By direction of the Commission.

April J. Tabor,

Secretary.

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¹ This section is substantively identical to the order that the Commission issued on January 18, 2024. *See* Order Postponing Effective Date of Final Rule Pending Judicial Review, In re Combating Auto Retail Scams Trade Regulation Rule, No. P204800 (Jan. 18, 2024), https://www.ftc.gov/system/files/ftc_gov/pdf/P204800CARSExtensionOrder.pdf.

² In accordance with its rulemaking authority under 12 U.S.C. 5519(d), the Commission promulgated the CARS Rule pursuant to 15 U.S.C. 45 and 57a(a)(1)(B) and 5 U.S.C. 553. 12 U.S.C. 5519(f)(1) and (f)(2) contain the pertinent definitions of “motor vehicle” and “motor vehicle dealer,” and the Rule applies only

to a “covered” subset. *See* 89 FR 590, 693–94 (Jan. 4, 2024) (to be codified at 16 CFR 462.3(e) through (f)).

³ *See* *Bauer v. DeVos*, 325 F. Supp.3d 74, 106-07 (D.D.C. 2018); *Sierra Club v. Jackson*, 833 F. Supp. 2d 11, 28 (D.D.C. 2012).

⁴ Because a notice of proposed rulemaking is not necessary for this delay of effective date, the Commission is not required to prepare a regulatory flexibility analysis under the Regulatory Flexibility Act. *See* 5 U.S.C. 603(a), 604(a).