

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chair
Rebecca Kelly Slaughter
Alvaro M. Bedoya**

In the Matter of:

**Combating Auto Retail Scams
Trade Regulation Rule**

Matter No. P204800

**ORDER POSTPONING EFFECTIVE DATE OF
FINAL RULE PENDING JUDICIAL REVIEW**

On January 4, 2024, the Commission published in the Federal Register a Final Rule to curtail certain unfair or deceptive acts or practices by covered motor vehicle dealers.¹ Final Rule, Combating Auto Retail Scams Trade Regulation Rule (“Rule”), 89 Fed. Reg. 590-91 (Jan. 4, 2024) (to be codified at 16 C.F.R. pt. 463). The Commission designated the Final Rule to become effective on July 30, 2024. *Id.* at 590.

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. The PFR challenged the Rule on the asserted grounds that it is “arbitrary, capricious, an abuse of discretion, without observance of procedure required by law, or otherwise not in accordance with law[.]” PFR 1-2. The Court has ordered that the administrative record be filed by February 14, 2024.

On January 8, 2024, Petitioners filed a motion with the Fifth Circuit seeking a stay of the Rule and expedited consideration of their PFR. Mot. for Stay of Final Rule and for Expedited Consideration. 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 C.F.R. § 4.2(d).

¹ 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 Fed. Reg. at 693-94 (to be codified at 16 C.F.R. § 462.3(e)-(f)).

The Administrative Procedure Act 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.” 5 U.S.C. § 705. The Commission believes that the Rule will provide consumers with critical protections from auto retail scams, that Petitioners’ challenges to the Rule lack merit, and that 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 it will require dealers to overhaul their practices and 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—as honest dealers will not be at a competitive disadvantage relative to dishonest dealers. Nonetheless, Petitioners’ assertions and suggestions that legally compliant dealers have to make unnecessary changes to satisfy Petitioners’ misunderstandings of the Rule have created uncertainty. Additionally, Petitioners are seeking expedited consideration of the PFR, and if that request is granted, a stay of the effective date pending expedited review should not postpone implementation of the Rule by more than a few months, if at all. 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. A Federal Register notice to reflect this action is forthcoming. Once the PFR’s merits are resolved, the Commission will publish a new document in the Federal Register establishing a new effective date.

Accordingly,

IT IS ORDERED THAT the effective date of the Final Rule, Combating Auto Retail Scams Trade Regulation Rule, 89 Fed. Reg. 590 (Jan. 4, 2024), be, and hereby is stayed.

By the Commission.

April J. Tabor
Secretary

SEAL:
ISSUED: January 18, 2024