



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
8400 Westpark Drive • McLean, Virginia 22102
703/821-7040 • 703/821-7041

Legal & Regulatory Group

November 28, 2005

Via E-Mail

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

Re: Regs BEMZ: FTC File No. P054803

Dear Secretary:

The National Automobile Dealers Association (“NADA”) submits the following comments in response to the Federal Trade Commission’s (“FTC” or “Commission”) request for comments on its proposal to extend through January 31, 2009 the current Paperwork Reduction Act clearances for information collection requirements (ICRs) contained in four consumer financial regulations enforced by the Commission. NADA’s comments pertain to the ICRs contained in Regulations B, M and Z.

NADA represents approximately 20,000 franchised automobile and truck dealers who sell new and used vehicles and engage in service, repair and parts sales. Our members employ more than 1.3 million people nationwide. A significant number of our members are small businesses as defined by the Small Business Administration. Accordingly, NADA is particularly focused on the regulatory burden imposed on small businesses by the FTC and other federal agencies that promulgate or enforce regulatory requirements that impact our members.

We submit comments on the proposed ICRs because we are concerned that that Commission has understated: (i) the Reg B recordkeeping burden by incorrectly assuming that respondents already incur the costs associated with this burden in the “ordinary course of business,” (ii) the Regs B, M and Z recordkeeping burden by not fully accounting for non-labor costs incurred by franchised automobile dealers, and (iii) the Regs B, M and Z monitoring burden by not fully accounting for the significant costs involved in retaining competent legal counsel to discern and set forth the respondents’ evolving compliance responsibilities. Examples of each of these concerns are described below.

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Costs Beyond Those Incurred in the “Ordinary Course of Business”

FTC staff estimates that Reg B’s “general recordkeeping requirements” impose an average annual burden of one hour per firm. 70 Fed. Reg. 56,698 (Sep. 28, 2005). This low estimate apparently is based on the assumption that “these entities would likely retain these records in the normal course of business even absent the recordkeeping requirement in the rules.” 70 Fed. Reg. 56,697. This assumption overlooks Reg B recordkeeping requirements that appear to apply to certain credit applications received by automobile and truck dealers.

In particular, Reg B appears to require dealers to retain credit applications received by customers in the case of “dead deals” (industry parlance for customer inquiries that do not result in a vehicle sale, such as when the customer submits a credit application to one dealership but ends-up purchasing a vehicle from a different dealership). This is because 12 C.F.R. section 202.12(b)(1) requires creditors to retain credit applications and related documents when a creditor notifies an applicant of action taken or of incompleteness, while section 202.12(b)(3), entitled “other applications,” requires creditors to retain credit-related documents when the notification requirements do not apply. Depending on the fact pattern, one of these two provisions appears to require dealers to retain “dead deal” credit applications for the applicable retention period even though dealers do not otherwise have a business reason for retaining them. This scenario likely impacts every one of the 21,640 new car dealerships in the country¹ almost on a daily basis (and often several times per day). To the extent dealers are not required to retain credit-related documents in certain “dead deal” scenarios, we encourage the Commission and/or the Federal Reserve Board to so clarify. Otherwise, we suggest the Commission revisit the accuracy of its estimate that the annual general recordkeeping requirement imposed by Reg B is one hour per firm.

Non-Labor Costs

The notice states, in part:

The cost estimates described below relate solely to labor costs and include the time necessary to train employees and be in compliance with the regulations. The applicable PRA requirements impose minimal capital or other non-labor costs, as affected entities generally have the necessary equipment for other business purposes. Similarly, staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business.

70 Fed. Reg. 56,697.

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¹ The number of new car dealerships as of January 1, 2005, according to NADA Date 2005 (printed in the May 2005 issue of NADA’s *AutoExec* Magazine).

We disagree with the Commission's premise that the Regs B, M and Z ICRs impose only minimal non-labor costs. Although certain records retained by dealers would be retained in the absence of a records retention requirement, others (such as the dead deal files described above) are retained solely for this purpose. Further, most of our members retain records in paper form and, due to the quantity of transactions involved, often must store them at off-site storage facilities. Thus, although the percentage will differ amongst dealers, a portion of the expenses related to collecting, transporting and storing these records results directly from the ICRs specified in the notice.

Similarly, it is inaccurate to assume that "compliance with these rules entails minimal printing and copying costs beyond those associated with documenting financial transactions in the ordinary course of business." *Id.* The costs involved in both printing adverse action notices and printing the required Reg Z and Reg M disclosures on retail installment sales contracts and lease agreements is hardly minimal. Although we do not possess data detailing these costs, it is noteworthy that in 2004 approximately 6,762,000 new vehicles and 10,111,000 used vehicles involved credit sales or leases with franchised dealers.² A large portion of the credit sale and lease documents used in these transactions is devoted to required Reg Z and Reg M disclosures, which significantly increases the printing costs of these forms.

Consequently, the annual burden estimate should not disregard non-labor costs associated with the ICRs.

Setup/Monitoring Costs

The notice also estimates the annual setup/monitoring burden for adverse action notices to be thirty minutes per respondent per year. We believe this estimate to be grossly understated.

Among the current regulatory challenges presented to auto dealers is understanding the circumstances under which they must present adverse action notices to credit applicants. This has prompted dealers to seek legal counsel on the scope of their compliance responsibilities and to arrange for compliance training for appropriate dealership personnel. Such counsel is not limited to adverse action notices. Several regulatory and case law developments in recent years involving Regs B, M and Z have prompted a similar review and follow-on training. The need to retain counsel to stay abreast of and understand these developments clearly involves more than 30 minutes of setup and monitoring costs per year at rates far in excess of \$32 per hour (the managerial/professional labor rates specified in the notice). Accordingly, the Commission should reconsider its burden estimate for setup and monitoring costs for Regs B, M and Z.

² CNW Marketing Research, Inc.

Conclusion

We recognize that the Commission must create burden estimates for a wide variety of creditors with many operational differences. Nevertheless, the process should be an informed one that accounts for the burdens we have described.

We appreciate the opportunity to comment on this matter.

Sincerely,

Paul D. Metrey
Director, Regulatory Affairs