



NATIONAL AUTOMOBILE DEALERS ASSOCIATION
Office of Legislative Affairs
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March 12, 2010

The Honorable Jay Rockefeller
Chairman
U.S. Senate Committee on Commerce, Science and Transportation
Washington, DC 20510

Dear Mr. Chairman:

On behalf of the nearly 17,000 members of the National Automobile Dealers Association (NADA), I am writing to express our strong opposition to the possible repeal of the procedural safeguards that currently apply to the rulemaking and enforcement powers of the Federal Trade Commission (FTC). The repeal or weakening of these safeguards could subject auto dealers to harmful regulatory burdens and increase prices for consumers. The revocation of these protections, which provide a necessary check on the FTC's broad authority, may be debated as the Senate considers legislation to reauthorize the FTC.

In 1975 and again in 1980, after numerous incidents of overreach, Congress imposed enhanced safeguards (collectively, "Magnuson-Moss") on the FTC when it seeks to outlaw specific acts or practices as "unfair" or "deceptive." The Magnuson-Moss protections were passed by Democratic-controlled Congresses with large bipartisan majorities.¹ The procedures that Congress required helped to create a more balanced regulatory regime. Some of the improvements Congress made included: (1) requiring the issuance of an advance notice of proposed rulemaking, followed by a notice of proposed rulemaking; (2) requiring a finding that the act or practice to be regulated is "prevalent"; (3) providing for an informal hearing at which any interested person is entitled to make an oral presentation and conduct cross-examination if a material fact is in dispute; and (4) mandating the publication of a Statement of Basis and Purpose for any final rule. The Magnuson-Moss safeguards have successfully compelled the FTC to use its broad discretion judiciously, which is entirely appropriate for an unelected body that regulates a diverse group of industries.

NADA is concerned that the removal of these well-established safeguards would re-establish a less rigorous regulatory procedure for the FTC and give the agency free rein to conduct fishing expeditions into any area of automotive retailing it perceives as "unfair." Already, the House Commerce, Trade and Consumer Protection Subcommittee has reported out legislation (H.R. 2309) directing the FTC to consider automotive retailing-related rulemakings without Magnuson-Moss safeguards. These rulemakings would potentially result in the government dictating the amount of compensation a dealer may receive for dealer-assisted financing, and allowing purchased vehicles to be returned even when they possess no mechanical

¹ The 1975 "Magnuson-Moss Act" passed the Senate by a vote of 70-5 and the House by voice vote; the 1980 FTC Improvements Act passed the Senate by a vote of 74-15 and the House by a vote of 272-127.

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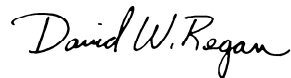
or other defect. This “preview” of what is potentially in store for auto dealers if Magnuson-Moss safeguards are repealed is cause for great concern. At a minimum, repeal of Magnuson-Moss would inject more uncertainty into an already volatile industry, and could further limit dealers’ willingness to invest in, expand, and improve their dealerships. Such uncertainty would certainly hinder dealer efforts to reverse the 54,600 dealership jobs lost last year due to the recession and the GM and Chrysler bankruptcies.

The present leadership of the FTC is promising that they will use the new powers they seek prudently, and clearly no one wants a repeat of the FTC’s regulatory overreach that occurred in the 1970s. However, history has a tendency to repeat itself, and repeal of the Magnuson-Moss protections would set the stage for further regulatory abuses.

Congress set the correct regulatory balance between the FTC and business nearly three decades ago. Accordingly, we urge the Senate not to include the repeal or weakening of the Magnuson-Moss safeguards in the upcoming FTC reauthorization bill.

We would be happy to discuss this matter further with you or your staffs. Please have your staff contact Michael Harrington or Bailey Wood at 202-547-5500 for further information. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "David W. Regan".

David Regan

Vice President, Legislative Affairs