

**Give me a *Brake*:**  
**A Summary of the CARS Rule**  
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The FTC continues its deep dive into the automotive industry with its latest opening chess move in the Combating Auto Retail Scams Rule, or simply known as the CARS Rule. The Rule is comprehensive and will fundamentally change the way dealers do business. In this brief article, I will briefly cover all of these topics to provide a better understanding of what is to come on the new regulations' effective date. The keyword here is "briefly" because the regulations that the FTC released spanned over 370 pages. In order to fully understand the CARS Rule and how it can potentially affect your daily operations, we will publish a series of articles over the next few months with each focusing on a specific area of the regulations to give each portion the attention that it deserves. Hopefully, you will be well-equipped to meet the demands by the Rule's effective date of July 30, 2024.

### **Overview and Applicability**

By now, you've heard about the CARS Rule by its original name the "Motor Vehicle Trade Regulations Rule" (or some variation of it) either from your state trade association or the National Automobile Dealers Association. For those of you who have not, the CARS Rule is essentially a set of regulations that purports to provide dealer guardrails (or a euphemism I like to use: "instructions with legal ramifications") on how you are to advertise, market, and sell motor vehicles to customers.

Touted as a consumer protection regulation, the goal of the CARS Rule is to reduce the number of unscrupulous dealers and poor transaction experiences that thousands of Americans ostensibly face every year. It is interesting to note that those dealerships that only sell motorcycles, ATVs, RVs, boats, scooters, electric bikes, and golf carts will be unaffected. From advertising disclosures to record-keeping requirements, let's jump into the thick of it to provide you with a bit more clarity as to what will need to change at the dealership level.

### **Advertising Prohibitions**

You have a car. You want to sell that car. You advertise the car for sale. A consumer sees the advertisement, inquires about it, and the vehicle is sold. Sounds simple enough right? The FTC has always overseen this advertising process under its current authority in Section 5, which prohibits "unfair or deceptive acts or practices in or affecting commerce." It was broad, but the CARS Rule effectively groups the FTC's fire on automotive transactions. Here is a list of prohibited activities that you cannot do when advertising a motor vehicle for sale. The list is long, so buckle up. You cannot misrepresent the following:

- 1) The cost or terms of purchasing, financing, or leasing a motor vehicle;
- 2) The costs, limitation, benefit, or any other aspect of an add-on product or service;
- 3) Whether or not the terms advertised are for financing or leasing;
- 4) The availability of any rebates or discounts by factoring into the advertised price those that are not widely available to all consumers;
- 5) The availability of vehicles at an advertised price;
- 6) Whether any consumer has been, or will be, preapproved or guaranteed for any product, service, or term;
- 7) The information about a consumer's application for financing;
- 8) Whether a transaction is final or binding on all parties;
- 9) Whether cash down payments, trade-ins, charging fees are refundable, or initiating legal proceedings if a transaction is not finalized;
- 10) Whether or when a dealer will pay off some or all of the financing or lease on a consumer's trade-in;
- 11) Whether reviews or rating of the dealer or the dealer's products/services are unbiased and independent;
- 12) Whether the dealer is affiliated with any United States government or branch of the armed forces;
- 13) Whether a consumer has won a prize or sweepstakes;
- 14) Whether, or under what circumstances, a motor vehicle may be moved including across state lines or out of the country; and
- 15) Whether, or under what circumstances, a motor vehicle may be repossessed.

Whew. As you can see, there is a lot to digest here in just the vehicle advertisements. What I said earlier about separate articles should now make a lot more sense!

## **Disclosure Requirements**

Through the CARS Rule, the FTC wants to further “instruct you” on what you need to disclose when placing advertisements and during the entire documentation process.

### *“Offering Price”*

Whenever you advertise a specific vehicle or finance special for a group of vehicles, you will have to identify the vehicle's “offering price.” This offering price includes everything except any *required* government charges (all fees or charges imposed by Federal, State, or local government agencies, including taxes, license and registration costs, inspection or certification costs, and any other such fees or charges). Long gone are the days of “MSRP only” pricing or “click here for details” links, and if you have not yet noticed, you can no longer state “Plus” document processing charges, mandatory add-ons, or filing charges in a disclaimer. They must be included in the offering price.

### *“Offering Price” in First Communication with Consumer*

The regulation is as novel as it is strange. We have received multiple questions about this during a live webinar last week co-hosted by me, Chris Cleveland (CEO), and Andy Graff (COO), and posted the answers in our Frequently Asked Questions (FAQ) brochure that was distributed to attendees. If a consumer contacts you about a specific vehicle (or financing special for a group of vehicles), whether it be an online chat, over the phone, in an email, or in a text message, you must respond to them with the offering price of the vehicle. One of the questions fielded was whether you had to tell the consumer the offering price even if the consumer did not ask about the price specifically. The regulations point to “yes.” If you did not attend our webinar, you can find more questions about these communications, and about other aspects of the CARS Rule, in our FAQs brochure [here](#).

### *Rebates, Discounts, and “Pre-approved” Loans*

The FTC prohibits you from factoring them into the advertised price but further clarifies that this prohibited activity involves rebates and discounts that are limited to only a few consumers (i.e. those rebates that are only available for the most expensive trim of a particular model or only to consumers with high credit scores). What is more important, suggests the FTC, is that you don’t make misrepresentations and will allow you to advertise rebates and discounts, and their limitations, in a “truthful manner”. This tells us that any rebates or discounts, and their limitations, must be clearly and conspicuously identified in the advertisement.

### *Add-ons that are Not Required*

Specifically, the FTC requires you to disclose in writing that the purchase of optional add-ons are not required for vehicle purchase or lease. This, the FTC assures, was prescribed for the purpose of preventing unfair or deceptive acts or practices.

### *Total Lease or Finance Payments and Comparisons*

A purported common practice that the FTC aims to curtail is dealers emphasizing a low monthly payment while diverting a consumer’s attention away from the overall cost of financing or leasing the vehicle. Therefore, anytime you advertise or mention a monthly lease or finance payment, you must also identify the total amount the consumer will pay to lease or purchase the vehicle at that monthly payment after making all payments as scheduled.

### *Comparing Monthly Payments*

Many of the complaints the FTC received were about dealers lowering monthly payments without telling consumers that the length of the loan is extended, thus making the purchase or lease of a vehicle more expensive over the life of the payments. Now, anytime you compare two monthly payments (such as via a desking tool's proposal sheet or payment quote), you must include a clear and conspicuous disclosure that the lower monthly payment will increase the total amount the consumer will pay to purchase or lease the vehicle.

### **Other Prohibited Activities**

#### *Add-Ons that Provide No Benefit*

You cannot charge a consumer for an add-on that provides no benefit to the consumer. The FTC provides some examples here:

- 1) Nitrogen-filled tire-related products or services that contain no more nitrogen than naturally exists in the air;
- 2) Sale of service contracts that are duplicative of manufacturer warranties;
- 3) Supposed rust-proofing add-ons that do not actually prevent rust;
- 4) Add-ons that the vehicle itself cannot support (like engine oil-change services on an electric vehicle);
- 5) Software or audio subscription services that the vehicle cannot support or use; and
- 6) GAP agreements on vehicles with a low LTV

#### *Charging a Consumer without Consent*

You cannot charge a consumer for *any item* unless you obtain the consumer's "express, informed consent" to be charged for that item. The FTC defines "express, informed consent" as "an affirmative act [that communicates] unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure, in writing...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;

Furthermore, the FTC identifies the following as *not being* "express, informed consent":

- 1) A signed or initialed document, by itself;
- 2) Pre-checked boxes; or
- 3) An agreement obtained through any practice designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice (which sounds eerily similar to “dark patterns” as it is related to consumer privacy choices)

Though not explicitly stated in the regulations, we believe that this will require you to provide the customer with an additional disclosure form that they must acknowledge and sign. We will cover that in more detail in an upcoming article.

## **Recordkeeping**

For 24 months, dealers must create and retain copies of the following:

- 1) Copies of all materially different advertisements, sales scripts, training materials, and marketing materials regarding the price, financing, or lease of a vehicle;
- 2) Copies of all purchase orders, financing, and lease documents signed by the consumer (whether you sold a vehicle or not);
- 3) All written communications relating to sales, financing, or lease between you and any consumer in which you sold or leased a vehicle

Another question we regularly saw during our live webinar was whether text and email communications between a salesperson and a customer, in which a vehicle was sold, needed to be retained for 24 months. The answer is “yes,” and we recommend that you train your staff to use software that tracks and records this electronic communication. Again, if you did not attend our webinar and would like a copy of our comprehensive FAQs, you can [find it here](#).

## **Outlook**

Though the regulation itself spans only 12 pages (with over 358 pages of comments), the ramifications to the industry are significant and very complex, but that’s why we’re here. Led by dealers and industry compliance experts, ComplyAuto has been preparing a solution for the CARS Rule since 2020 called “Guardian,” which will be announced at the NADA Convention in Las Vegas. Visit us at Booth #4649W to learn more and or sign up to receive updates [here](#).

As the FTC continues to receive commentary about the CARS Rule and ratchets up enforcement in other areas of the automotive industry, ComplyAuto intends to remain the nation’s leading automotive compliance software solution by bringing you the latest information that affects your dealership.