

# What is the Federal Trade Commission's Combating Auto Retail Scams Trade Regulation Rule (CARS Rule)?

Written By **Mayukh Sircar, CIPP/US** (MSircar@wardandsmith.com)

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The Federal Trade Commission's ('FTC') new Combating Auto Retail Scams Trade Regulation Rule, known as the CARS Rule (the 'Rule'), is a comprehensive initiative aimed at bringing transparency and fairness to the car buying and leasing process, which is currently scheduled to go

**into effect on July 30, 2024.**

The Rule aims to make clear that certain deceptive or unfair practices (e.g., bait-and-switch tactics, hidden charges, conduct that harms consumers) are illegal. The Rule is meant to supplement Regulation Z which sets out certain disclosures that must be made regarding the offer price, Annual Percentage Rate ("APR") and expected monthly costs to the consumer in purchasing an automobile.

The Rule emphasizes how long-standing principles of truth in advertising and fair dealing apply to consumers shopping for automobiles.

The Rule consists of four key principles:

## **First CARS Rule Principle: Prohibition of Misrepresentations**

The Rule prohibits misrepresentations about material information in various categories that are important to consumers. "Material" information is defined as data likely to influence a person's choice or conduct regarding goods or services.

Additionally, the Rule specifies that both express and implied misrepresentations are explicitly banned.

Under this principle, it is **illegal for dealers to make misrepresentations** about material information related to:

- a. The costs or terms of buying, financing, or leasing a vehicle;
- b. Any costs, limitation, benefit, or any other aspect of an add-on product or service;
- c. Whether the terms are, or transaction is, for financing or a lease;
- d. The availability of any rebates or discounts that are factored into the advertised price but not available

- to all consumers;
- e. The availability of vehicles at an advertised price;
  - f. Whether any consumer has been or will be preapproved or guaranteed for any product, service, or term;
  - g. Any information on or about a consumer's application for financing;
  - h. When the transaction is final or binding on all parties;
  - i. Keeping cash down-payments or trade-in vehicles, charging fees, or initiating legal process or any action if a transaction is not finalized or if the consumer does not wish to go forward with a transaction;
  - j. Whether or when a dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle;
  - k. Whether consumer reviews or ratings are unbiased, independent, or ordinary consumer reviews or ratings of the dealer or the dealer's products or services;
  - l. Whether the dealer or any of the dealer's personnel or products or services is or was affiliated with, endorsed or approved by, or otherwise associated with the United States government or any federal, state, or local government agency, unit, or department, including the Department of Defense or any branch of the military;
  - m. Whether consumers have won a prize or sweepstakes;
  - n. Whether, or under what circumstances, a vehicle may be moved, including across state lines or out of the country;
  - o. Whether, or under what circumstances, a vehicle may be repossessed; and
  - p. Any of the disclosures required by the Rule.

## **Second CARS Rule Principle: Clear and Conspicuous Disclosures**

The Rule requires dealers to provide "clear and conspicuous" disclosures of the offering price, which is the actual price a consumer must pay for an automobile, excluding required government charges.

The Rule requires clear and conspicuous disclosures regarding ***the offering price***.

### ***Offering Price***

In connection with the sale or financing of vehicles, dealers must clearly disclose the offering price, defined as the full cash price for which the dealer will sell or finance the vehicle to any consumer; however, required government charges (e.g., taxes, license and registration costs, or inspection or certification fees) can be excluded from the offering price.

The Rule specifies three circumstances where the dealer must clearly disclose the offering price:

- i. In any ad that references, expressly or by implication, a specific vehicle;
- ii. In any ad that represents, expressly or by implication, any monetary amount or financing term for any vehicle; and
- iii. In any communication with a consumer that refers, expressly or by implication, to a specific vehicle or to any monetary amount or financing term. Additionally, in its first response to a consumer, the dealer must clearly disclose the offering price. If the communication or response is in writing, the offering price must be disclosed in writing.

Please note that in the rulemaking history, the FTC clarified that "any" as used herein to refer to "any vehicle" carries the commonly understood meaning in the Merriam-Webster Dictionary of "one or some indiscriminately of whatever kind" Accordingly, in stating "any vehicle," the FTC means "a specific vehicle, or a group of vehicles."

A "specific vehicle" is a vehicle that is specifically identified by the dealer by describing that vehicle, referring to a stock or VIN number, or using other means. Based on the FTC's statement, "a group of vehicles" could be any number of vehicles that is more than one specific vehicle, which grouping may change depending on the context (e.g., all silver Ford F-150s on a dealer's lot, all Ford F-150s on a dealer's lot, or all Ford F-150s with a towing hitch on a dealer's lot, may be considered groups of vehicles depending on the dealer's goals).

Under the Rule, dealers will have to be more particular in disclosing offering prices, monetary amounts, and financing terms, including any discounts.

For instance, previously, a dealer could offer a discount of "up to \$3,000 off depending on the car purchased"; however, under the Rule, a dealer will have to be more specific as to the range of discounts and the groups of vehicles to which the ranges of discounts apply.

For example, a dealer offering a similar discount of up to \$3,000 off, under the Rule, could advertise the discount as: all silver Ford F-150s are \$3,000 off, all Ford Explorers are \$2,000 off, all 2023 Ford Taureses are \$1,000 off, etc.; or alternatively: vehicle sticker prices in the range of \$10,000-\$20,000 receive \$1,000 off, vehicle sticker prices in the range of \$20,001-\$30,000 get \$2,000 off, vehicle sticker prices in the range of \$30,001 and above get \$3,000 off, etc.

### ***Add-ons Not Required***

When making any representation, expressly or by implication, about an add-on product or service, the dealer must clearly disclose that the add-on is not required, and that the consumer can buy or lease the vehicle without the add-on. An "add-on product or service" is defined as:

"any product(s) or service(s) not provided to the consumer or installed on the Vehicle by the Vehicle manufacturer and for which the Dealer, directly or indirectly, charges a consumer in connection with a Vehicle sale, lease, or financing transaction".

Please note that the Rule includes other important provisions prohibiting dealers from charging consumers for add-ons that do not offer consumers a benefit (discussed below).

Furthermore, the Rule also requires clear and conspicuous disclosures regarding ***the total of payments for a financed or lease transaction.***

### ***Total Payments for a Financed or Lease Transaction***

When making any representation, expressly or by implication, about a monthly payment for a vehicle, the dealer must clearly disclose the total amount the consumer will pay after making all payments as scheduled.

Additionally, if the total amount assumes a consumer will provide consideration (e.g., a cash down payment, or a trade-in) the dealer must clearly disclose the amount of consideration the consumer must provide.

Finally, the Rule also requires clear and conspicuous disclosures regarding ***monthly payments comparison.***

### ***Monthly Payments Comparison***

If a dealer makes any express or implied comparison between payment options that includes a discussion of a lower monthly payment, the dealer must clearly disclose whether the lower monthly payment will increase the total amount the consumer will pay to buy or lease the vehicle. If the dealer makes the representation in writing, the disclosure must be in writing, too.

If representations regarding the offering price, the fact that add-ons are not required, total payments for a financed or lease transaction, and/or monthly payment comparisons are made to the consumer in writing, the above disclosures must all be in writing.

One of the goals of the FTC is to protect consumers from lost time and effort, supra-competitive prices, and unexpected charges by informing consumers of the price they can expect to pay for a vehicle, whether that is a specific vehicle or a vehicle within a set of vehicles. By requiring dealers to be more particular in disclosing the offering price of a specific vehicle, or a set of vehicles, the Rule hopes to meet the FTC's consumer protection goals.

### ***What is 'Clearly and Conspicuously' under the FTC's CARS Rule?***

Under the Rule, "Clearly and conspicuously" means "in a manner that is difficult to miss (i.e., easily noticeable) and easily understandable, including in all of the following ways:

The Rule also requires clear and conspicuous disclosures regarding ***the fact that add-ons are not required.***

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.
2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication."

### **Third CARS Rule Principle: No Charges Allowed for Non-Beneficial Add-ons**

The CARS Rule prohibits dealers from charging consumers for add-ons that do not provide a benefit to the consumer. According to the FTC, examples of such non-beneficial add-ons include:

- a. "nitrogen-filled tires" that contain no more nitrogen than naturally exists in the air;
- b. add-ons that do not provide coverage for the vehicle, the consumer, or the transaction, or are duplicative of the car's warranty coverage;
- c. charging consumers for a GAP Agreement if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio means the consumer will not benefit financially from the product or service.

The above list of prohibited add-ons is not an exhaustive list and is provided only as examples of the nature of add-ons for which a dealer cannot charge.

## **Last CARS Rule Principle: Express, Informed Consent for Charges**

Dealers must obtain express, informed consent from consumers before charging them for anything. Under the Rule, "express, informed consent" means "an affirmative act communicating unambiguous assent to be charged, made after receiving clear and conspicuous disclosures of: (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 the consumer will be charged over the period of repayment with and without the product or service."

Pursuant to the Rule, the consumer's consent must be in close proximity to when and where the dealer makes the clear disclosures. The clear and conspicuous disclosures by the dealer must be in writing, and orally, for in-person transactions.

The FTC expressly states that practices that subvert express, informed consent (e.g., a signed or initialed document, by itself; a prechecked box; or an agreement obtained through any practice that has the effect of impairing consumers' autonomy, decision-making, or choice) do not constitute express, informed consent required under the Rule.

## **Other Important Considerations Under the FTC's CARS Rule**

### ***Vehicles Covered:***

The Rule applies to "Covered Motor Vehicles," which encompasses any self-propelled vehicle designed for the transportation of people or property on public streets. Notably, the definition includes various types of automobiles, such as cars, trucks, and SUVs. Exclusions, however, apply to recreational boats and marine equipment, motorcycles, scooters, electric bicycles, motor homes, recreational vehicle trailers, slide-in campers, and golf carts.

### ***Communication Channels:***

The CARS Rule takes a broad approach by applying to all means employed by dealers to communicate with potential car buyers and lessees. This includes channels such as television and radio ads, print media, direct mail, websites, social media, and ads streamed online. Additionally, the Rule also covers oral statements conveyed to consumers.

### ***Advertising in Languages Other Than English:***

Acknowledging the diverse linguistic landscape in the U.S., the Rule explicitly includes provisions for advertising and transactions conducted in languages other than English. The FTC emphasizes the importance of disclosures being "clear and conspicuous," and "express, informed consent" (which requires consumers to "unambiguously assent") in such scenarios.

As such, the Rule mandates that if a dealer communicates with consumers in a language other than English, disclosures must also be made in that language.

### ***Waiver of Protections Prohibited:***

A significant prohibition under the Rule is the explicit forbiddance of obtaining or attempting to obtain a waiver from a consumer regarding any protection or right extended by the Rule.

### ***Recordkeeping Requirements:***

Dealers are subject to stringent recordkeeping requirements under the Rule, mandating the creation and retention of records for at least 24 months that are necessary to demonstrate compliance with the Rule.

These records have the added benefit for dealers of evidencing compliance in the event such dealers' compliance or practices are ever challenged. Records required to be maintained under the Rule encompass various documents, including advertisements, purchase orders, financing and leasing documents, documents about add-ons, and consumer complaints.

#### ***Penalties for Violation:***

The violation of any FTC Trade Regulation Rule, including the CARS Rule, may result in corrective measures to change how a dealer conducts business, restitution to affected consumers, and civil penalties of up to \$50,120 per violation. This underscores the serious implications for non-compliance with the Rule.

#### ***Interaction with State Laws:***

While the Rule sets federal standards, it does not supersede state laws unless there is a direct inconsistency. Notably, if a state law or regulation provides greater protections to consumers than the Rule, the FTC does not consider it to be inconsistent.

Accordingly, if a more protective state law exists, the Rule and the FTC ensure that residents of that state benefit from the higher standards offered by their State.

#### **Recommended Actions for Motor Vehicle Sales Enterprises**

Under Regulation Z, automobile dealers are already required to provide certain disclosures regarding the offer price, APR, and expected monthly costs to a consumer looking to purchase an automobile. In promoting transparency and accountability in the sale and purchase of automobiles, the Rule:

- (1) prohibits certain material misrepresentations,
- (2) imposes additional requirements for "clear and conspicuous" disclosures regarding:
  - the offering price;
  - add-ons not being required;
  - total payments for a financed or lease transaction; and
  - monthly payments comparison
- (3) prohibits charging for non-beneficial add-ons; and
- (4) acquiring express, informed consent of the consumer before charging the consumer for anything.

While automobile dealers already provide careful representations and disclosures to their customers, the Rule may require many dealers to reevaluate the representations they provide and the disclosures they make to ensure they comply with the increased requirements under the Rule. We recommend an automobile dealer takes the time to understand the new prohibitions and required disclosures under the Rule, evaluates the representations and disclosures the dealer currently makes, ensures its marketing and sales teams are aware of any representations they cannot or should not make, and disclose the appropriate information to consumers to remain compliant with the new Rule.

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