



## Consumer Protection/FTC ADVISORY ■

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### FTC Finalizes CARS Rule Imposing Substantial Regulatory Requirements on Auto Dealerships

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#### Executive Summary

The Federal Trade Commission (FTC) has finalized its Combating Auto Retail Scams Trade Regulation (CARS) Rule, which will affect almost every aspect of auto advertising and sales. Our Consumer Protection/FTC team explains how the new rule may require significant changes from dealerships to come into compliance.

- The FTC's announcement aligns with its commitment to target what the FTC and Biden Administration call "junk fees"
- The CARS Rule imposes on auto dealers significant new restrictions on sales practices, as well as additional disclosure and recordkeeping requirements
- The CARS Rule is scheduled to take effect July 30, 2024

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On December 12, 2023, the Federal Trade Commission (FTC) finalized its rulemaking regulating auto dealership sales practices and allowable fees. The [Combating Auto Retail Scams Trade Regulation \(CARS\) Rule](#) was promulgated under the FTC's regulatory authority over auto dealerships authorized by the Dodd–Frank Act of 2010.

The Rule follows a June 2022 notice of proposed rulemaking that proposed prohibiting certain misrepresentations in the course of auto sales, requiring accurate pricing disclosures in advertising and sales discussions, requiring express, informed consent for any charges, prohibiting the sale of any add-on product or service that confers no benefit to the consumer, and requiring dealers to keep records of advertisements and transactions.

The notice proposing the rule received more than 10,000 comments from consumer advocates, auto dealers and industry groups, and federal and state lawmakers and law enforcement agencies. The comments

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included significant pushback and skepticism from inside the auto dealer industry, which argued that the proposed regulations would do little to discourage bad actors from deceiving consumers while creating burdensome recordkeeping requirements for auto dealers that already follow the spirit, if not the letter, of the proposed regulations. The FTC nonetheless promulgated the final rule in spite of an [investigation from the U.S. House of Representatives Committee on Oversight and Reform](#) into whether, in issuing the proposed rule, the FTC failed to follow its own required procedures or otherwise “overstep[ed] the bounds of its role in protecting the American Marketplace.” In addition, a [proposed bill](#) from U.S. Senators Jerry Moran (R-KS) and Joe Manchin (D-WV) to reopen the proposed rule’s comment period is currently pending in committee. [Senator Moran has decried](#) the CARS Rule’s potential to add paperwork and red tape to auto dealerships, while Senator Manchin has objected to the short notice-and-comment period and the lack of consumer testing and cost-benefit analysis. Given this backdrop, it would not be surprising to see a court challenge to the Rule’s legality, although no lawsuits have been filed as of the date this advisory was published.

## Requirements

Once in effect, the CARS Rule will broadly regulate auto dealership behavior in five ways.

First, **the Rule prohibits auto dealers from making material misrepresentations when selling an automobile.** Specifically, 16 different types of misrepresentations are prohibited, including misrepresentations about the cost of the vehicle, financing terms, availability of financing, the availability of any rebates or discounts, preapproval, when a transaction is final, trade-in financing credits, whether the consumer can recover a down payment or trade-in if they wish to cancel a transaction, whether a product is approved by the government, prizes or sweepstakes, when vehicles can be moved, when vehicles can be repossessed, and any disclosure required by the CARS Rule. While most dealers likely work to avoid misrepresentations to their customers, they will need to adopt compliance efforts to specifically address each category.

Second, **the Rule requires mandatory disclosures** for each sale or lease transaction, including:

- The offering price, or full cash price for which an auto dealer will sell or finance a vehicle, must be disclosed in nearly all advertisements or any communication with a consumer that references a specific vehicle, price, or financing term.
- All add-ons presented to customers must be listed as required or optional whenever an auto dealer makes any representation to any consumer about any add-on.
- Total payments must be disclosed for all finance and lease transactions, including a sum of all period payments and whether or not the total includes any down payment or trade-in amount.
- A comparison of monthly payments under different financing or leasing options must be provided to consumers for lease or financing transactions, including a comparison of how different payment terms and lengths will affect the total amount paid over the life of the lease or financing.

Third, **the Rule makes it illegal for dealers to sell add-ons that have no benefit to the consumer**, such as “nitrogen-filled” tires that contain the same amount of nitrogen as normal air.

Fourth, **the Rule requires that dealers obtain express, informed consent from consumers before charging them for anything.** This requirement applies to the car, any financing fees, any transaction fees, any fees for add-ons, and any other fees charged by dealers to consumers.

Finally, **the Rule contains significant recordkeeping requirements.** Auto dealers will be required to keep, for 24 months, all records of every sale, finance, or lease transaction, every materially different advertisement, every marketing material about the price, every marketing material about financing terms, documents showing that sold add-ons have some benefit to the consumer, and documents showing the required express, written consent of consumers for every add-on sold.

### **The FTC's Broader Focus on "Junk Fees"**

The CARS Rule is the culmination of a long-time focus from the FTC on what it considers to be unfair and deceptive practices by auto dealers and a more recent focus from the FTC and other agencies to enforce unnecessary and hidden fees across industries. Following a [call from the Biden Administration](#) to protect consumers from unnecessary "junk fees," in addition to the CARS Rule, the FTC recently issued a [notice of proposed rulemaking](#) to prohibit junk fees generally, which the FTC [describes](#) as "hidden or bogus fees that can harm consumers and undercut honest businesses." This proposed rule defines unfair and deceptive practices to include charging for "hidden" fees or failing to display the total price for a transaction more prominently than any other price. The proposed CARS Rule is a more targeted application of that general enforcement effort, targeting add-on, finance, and lease transactions at auto dealers specifically.

The CARS Rule comes at a time when the FTC is already actively targeting auto dealers, particularly add-on sales practices. The FTC has recently settled with or fined several auto dealers for their add-on sales practices, including a [\\$10 million settlement with Napleton](#) on November 14, 2022 for alleged junk fees and discriminatory practices.

Barring court intervention, the CARS Rule will take effect on July 30, 2024. Violations of the Rule could incur significant monetary penalties, including civil penalties of up to \$50,120 per violation, as well as consumer redress. As the CARS Rule represents a sea change to current sales and disclosure practices, auto dealers should prepare now so they will be in compliance the day the Rule comes into effect.

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