



## FTC's New CARS Rule Imposes Added Requirements on Auto Dealers

Almost 18 months after it first proposed the rule, the FTC announced its Combating Auto Retail Scams Trade Regulation (CARS) Rule, which goes into effect on July 30, 2024. The CARS Rule contains some important new requirements for auto dealers across the country. The CARS Rule also contains special protections for members of the armed services.

For every transaction, the CARS Rule imposes four broad categories of new prohibitions and requirements: (1) it prohibits misrepresentations regarding "material" information; (2) dealers must disclose the "actual price any consumer can pay to get the car, excluding only required government charges;" (3) dealers cannot charge buyers for "add-ons that don't provide a benefit;" and (4) dealers must now obtain a buyer's express, informed consent before charging for anything.

Each of these four new regulated areas have specific details that do not easily lend themselves to a comprehensive summary. However, for the prohibition on misrepresentations about material information, information is "material" if it is "likely to affect a person's choice of, or conduct regarding, goods or services." Some industry-specific examples of material information in the car buying process are: (a) costs and terms of buying, financing or leasing; (b) costs, limitations, benefits, or any other aspect of an add-on product or service; (c) the availability of vehicles at an advertised price; and (d) the availability of rebates or discounts that are factored into the advertised price but not available to all consumers.

As for disclosures regarding the offering price, dealers must clearly disclose the "full cash price for which the dealer will sell or finance the vehicle to any consumer." Only government charges, like tax, license, and registration costs, can be excluded from

this price. The following communications must comply with this new rule: (1) any ad referencing, expressly or by implication, a specific vehicle; (2) any ad that represents, expressly or by implication, any monetary amount or financing term for any vehicle; and (3) any communication with a consumer that refers, expressly or by implication, to a specific vehicle or to any monetary amount or financing term. It should be noted that, if the communication is initiated by the potential buyer, the dealer must, in its first response, clearly disclose the offering price and, if the initial communication from the consumer is in writing, the dealer must make the disclosure in writing.

Dealers must not only disclose the offering price, but the total of all payments for leased or financed vehicles. This disclosure is similar to disclosures for home loans that require lenders to show the borrower how much they will pay over the life of the loan. That is, the dealer must disclose “the total amount the consumer will pay after making all payments as scheduled,” including any down payments made. And when showing buyers various financing options (e.g., financing at different monthly payment amounts), the dealer “must clearly disclose that the lower monthly payment will increase the total amount the consumer will pay.”

Relatedly, dealers must also disclose that add-on products and services are not required. And on the topic of add-ons, dealers may not charge buyers for “add-ons that don’t provide a benefit.” Examples of such add-ons that the FTC has specifically called out are (a) nitrogen-filled tires if they contain no more nitrogen than naturally exists in the air; (b) warranties or service contracts that don’t provide coverage for the vehicle, consumer, or transaction or that are duplication of the factory warranty; and (c) service contracts for EVs that include services that would only be applicable to an internal-combustion vehicle (e.g., oil changes).

Finally, dealers must now get buyers’ “express, informed consent” prior to charging the buyer for anything. Such consent must take the form of “unambiguous assent to be charged, made after receiver clear and conspicuous disclosures of what the charge is for and the amount of the charge, including, if the charge is for a product or service, all fees and costs the buyer will be charged over the period of repayment with and without the product or service.” The timing of the consent is also important – under the CARS Rule, the consent must be obtained close in time and place to when and where the initial disclosure is made. These disclosures and consents must

be made in writing and orally for in-person sales.

Given the breadth and specificity of these new rules, auto dealers will want to review all of their forms and conduct trainings with all of their personnel who are in any way involved in the sale of a vehicle to ensure compliance with the CARS Rule when it goes into effect on July 30, 2024.

*This blog post was drafted by [Jacob Hollars](#), a partner in the Spencer Fane Denver office. For more information visit [www.spencerfane.com](http://www.spencerfane.com).*