

# FTC CARS Rule



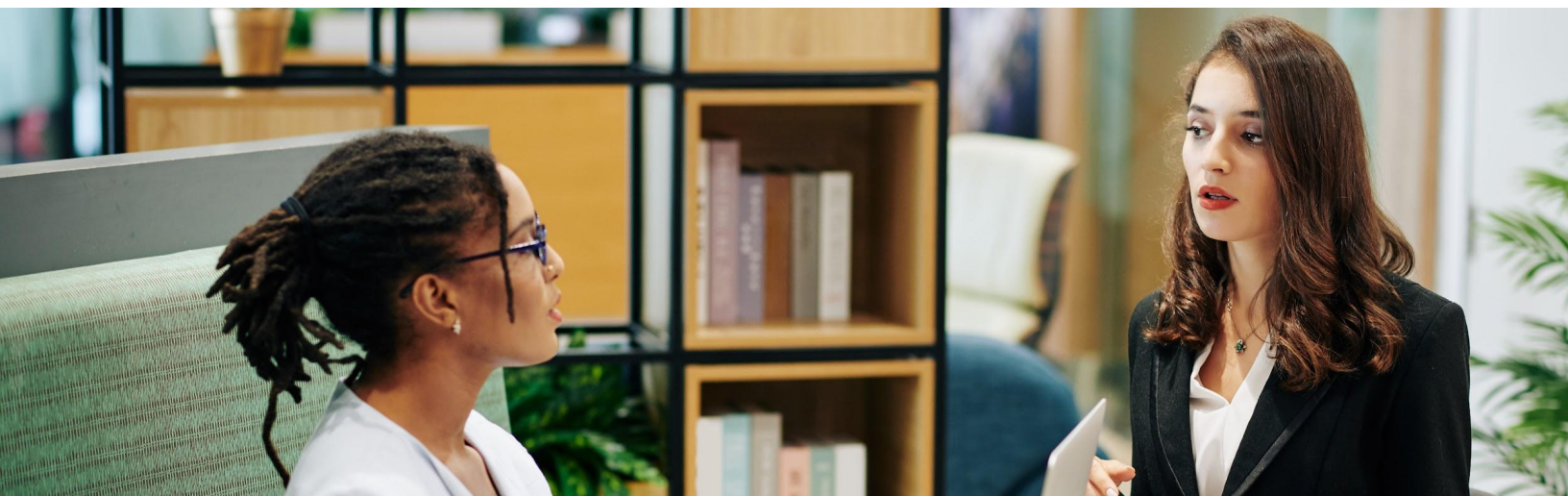
## Frequently Asked Questions + Answers

UPDATED February 2024



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The FTC CARS Rule is the most comprehensive set of federal regulations for the automotive dealership industry in history. The Rule goes into effective July 30, 2024.

## Potential Fines and Penalties

### **What are the fines and penalties related to noncompliance with the CARS Rule?**

A violation of the CARS Rule is an unfair or deceptive act or practice in violation of Section 5 of the Federal Trade Commission Act for any covered motor vehicle dealer. The FTC can issue fines of up to \$50,120 per incident for such violations.

## CARS Rule Application

### **Does the CARS Rule also apply to both new car franchised dealers and independent or used vehicle dealers?**

Yes. The CARS Rule is applicable to all "Covered Motor Vehicle Dealers", which includes both new car franchise vehicle dealers and used, independent dealers. However, it does exclude some dealership types, such as recreational boats and marine equipment; motorcycles; motor homes, recreational vehicle trailers, slide-in campers; and golf carts.

### **Does the CARS Rule apply to parts and service advertisements?**

No. These specific rules do not apply to parts and service advertisements. However, it's important to note that the FTC has broad authority to regulate any unfair or deceptive acts and practices. This authority extends to activities in a dealer's parts and service departments, which could include practices similar to those addressed in the CARS Rule.

### **Does the CARS Rule apply to powersports dealerships, such as ATVs and other off-road vehicles?**

Maybe. The CARS Rule states that the regulations apply to all "Covered Motor Vehicle Dealers", and excludes only "recreational boats and marine equipment; motorcycles; and motor homes, recreational vehicle trailers, and slide-in campers; and golf carts." There is some ambiguity regarding applicability of the CARS Rule to powersports vehicles such as ATVs and similar off-road vehicles. ComplyAuto's position is that dealers specializing in these types of vehicles should prepare to have the CARS Rule apply to them unless clarification is obtained from the FTC.



# Vehicle Availability

## **Can you advertise vehicles for sale that are currently “in-transit” from the manufacturer?**

Yes, so long as “in-transit” is clearly and conspicuously disclosed on the advertised vehicle. The new regulations prohibit the advertisement of vehicles that are not presently available for purchase, a rule that is consistent with the laws of many states. These regulations also require dealers to list a specific “offering price” for each vehicle they advertise. This creates a dilemma for dealers who need to advertise vehicles that are “in-transit” with a price, as it could seem to contravene the ban on advertising unavailable vehicles. However, the underlying aim of these rules by the FTC is to prevent deceptive “bait and switch” tactics. Such tactics involve advertising a vehicle to lure customers to the dealership, only to reveal that the vehicle was never available, with the actual intent to sell a different or more expensive vehicle.

We acknowledge that some manufacturers mandate dealers to list in-transit vehicles on their websites particularly due to current inventory shortages. The FTC provided clarification on this point and stated the rule does not prohibit a dealer from “advertising a vehicle with limitations on availability in a truthful manner”. Therefore, if dealers are going to advertise in-transit vehicles, it would be advisable for dealers to clearly and conspicuously state in their advertisements that the in-transit vehicle is not currently available at the dealership. It may also be prudent to mention the expected arrival date when the vehicle will be available for sale. The critical aspect is to avoid any misleading implications that the vehicle is available for immediate sale at the listed price.



## Vehicle Availability (continued)

### **For dealership groups that share inventory, can a dealership advertise a vehicle that is available for sale at an affiliate dealership's lot?**

Yes, so long as the advertised vehicle's current location is clearly and conspicuously disclosed on the advertisement. The primary objective of the FTC's vehicle availability rule is to prevent misleading "bait and switch" advertising tactics. When it comes to advertising these "off-site" vehicles, which are those vehicles that are advertised across multiple websites of same-brand sister dealerships or all advertised in common under one dealer group site, such advertisements must clearly disclose the advertised vehicle's current location. This approach helps prevent customers from being misled about where the vehicle is physically located.

Therefore, it's advisable to clearly identify each vehicle's location in its respective advertisement, even when the inventory is advertised across different dealership websites or on singular dealer group websites. The FTC also clarified in the rules that dealers "should not affirmatively represent that a vehicle is available on its lot without a reasonable basis that the vehicle is on the lot or without clearly and conspicuously noting that the vehicle will be made available after transfer from an affiliate's lot." Therefore, dealer groups should consider adding a disclosure to vehicle description pages that states something like "Please be aware that this vehicle is currently located at an affiliate dealership and will be made available for viewing or purchase upon request after transfer to our dealership."

### **In light of the prohibition against advertising vehicles that are not available for sale, is it necessary to remove listings of sold vehicles from my dealership's website?**

Yes. It is essential for dealerships to implement a process that ensures sold vehicles are promptly removed from their website and other online advertising platforms. This is often managed through an automated system that integrates the dealership's inventory feed with its website. Essentially, once a vehicle is marked as sold in the dealership's system, it should automatically be removed from the website during the next routine synchronization. The primary aim of this practice is to avoid scenarios where customers visit the dealership under the false impression that a vehicle, which has already been sold, is still available.

# Disclosure Requirements

## **Is it permissible to use a "Click Here for Details" button in online advertisements for the vehicles offering price and other disclosures?**

No. Such disclosures must be clear, conspicuous and "unavoidable" under the Rule. The FTC has clarified that disclosures behind a link or button are not "unavoidable" because they can be "avoided" by not clicking the link or button.

## **What is the difference between a "mandatory" add-on and an "optional" add-on under the CARS Rule?**

Under the CARS Rule, the distinction between "mandatory" and "optional" add-ons primarily lies in whether they need to be included in the vehicle's offering price. A "mandatory" add-on is one that the dealer requires to be purchased with the vehicle, which must be included in the offering price. Examples can include accessories on customized vehicles, pre-installed window tint, or catalytic converter etching. On the other hand, "optional" add-ons are those that the customer can choose not to purchase, such as GAP insurance, service contracts, maintenance agreements, and surface protection products.

Optional add-ons require a clear and conspicuous disclosure that the add-on is optional and does not need to be purchased by the customer to purchase or lease the vehicle.

Both types of add-ons are subject to the Rule's disclosure requirements, including the need to obtain the customer's express, informed consent. Determining whether an add-on is mandatory or optional can be nuanced, but dealers might consider factors like:

- 1. Service vs. Tangible Good:** Services contracts are more likely to be optional, unlike pre-installed accessories. GAP agreements and service contracts are typically optional add-ons.
- 2. Prior Practice of Removal:** If a dealer commonly removes or disables an add-on at a customer's request, it is likely "optional." For example, theft deterrent or protection devices.
- 3. Ability to Remove:** Add-ons that are difficult or impossible to remove without causing damage or substantial effort are usually "mandatory." Pre-installed window tint is a good example. The FTC also recognizes dealer-customized vehicles with pre-installed accessories in this category.
- 4. State Law:** Some states, like California, legally categorize certain products as "optional." This includes theft deterrent devices, surface protection products, maintenance and service contracts, insurance products, and GAP agreements.

## Disclosure Requirements (continued)

### **Is the FTC planning to provide a standardized form that meets the disclosure requirements of the Rule, particularly for add-ons and other dealer fees?**

No, the FTC has not suggested that it will provide a model form for the new disclosure requirements under the Rule. As a result, dealers will need to either modify their current forms or create new ones to comply with these requirements. The necessary elements for such a form include:

- Listing the price of all add-ons and other dealer fees.
- Providing a detailed description of each charge.
- Indicating whether each add-on is optional or mandatory.
- For optional add-ons, showing the total cost with and without each add-on.
- Clearly stating that purchasing optional add-ons is not required.
- Clearly disclosing that Guaranteed Asset Protection (GAP) is not a prerequisite for obtaining financing.
- Requiring initials next to each charge to confirm the customer's express, informed consent.
- Including a space for the customer's signature at the bottom of the form.

ComplyAuto is in the process of developing a model form to assist dealers in meeting these requirements.

### **How does the CARS Rule apply to vehicle listings on third-party websites and lead providers like CarGurus or AutoTrader?**

Dealers are ultimately responsible for ensuring compliance with the CARS Rule on third-party websites and similar platforms that list the dealer's specific vehicles. It's important for dealers to carefully review their contracts with these third-party vendors and lead-providers to understand the specifics regarding liability, indemnification, and other responsibilities related to compliance with advertising regulations.



## Fees & Charges

### **Are dealer fees – like document fees, electronic filing fees, and destination charges – required to be included in the vehicle's "offering price"?**

Yes, these types of dealer fees must be included in the "offering price" as per the CARS Rule. The Rule specifies that only mandatory governmental fees can be excluded from the offering price. This means that all other mandatory add-ons and dealer fees, such as pre-installed dealer accessories, document fees, electronic filing fees, and destination charges, must be factored into the total offering price. It is no longer acceptable to list these fees separately or exclude them from the advertised price, either in disclaimers or otherwise.

However, it's crucial to be aware that some states, such as Wisconsin, Oregon, and Washington, have their own laws requiring certain fees to be excluded from the advertised price. These state laws may conflict with the federal CARS Rule. Dealers operating in these states should seek legal advice to determine how to reconcile these differing requirements and decide whether state or federal law takes precedence in their specific situation.

### **Is it permissible to itemize dealer fees, such as a documentation fee, separately in our online vehicle pricing, in addition to including it in the total "offering price"?**

Yes. While the document fee must be included in the vehicle's offered price as mandated by the CARS Rule, you are allowed (but not required) to also itemize it separately in your online advertisements. The key requirement to remember is that this fee, along with any other mandatory dealer add-ons and fees, must be factored into the overall offering price of the vehicle. It is acceptable to provide a breakdown of these fees for transparency and customer information purposes, but the total price presented to potential buyers must include such fees.

### **Do fees paid to third-party titling companies need to be included in the advertised "offering price" of a vehicle?**

Yes. Fees paid to third-party titling companies must be included in the advertised "offering price" of a vehicle. According to the CARS Rule, the only fees that can be excluded from an advertised vehicle's "offering price" are "required government charges," which are defined as fees and charges imposed by a Federal, State, or local government agency. Since third-party titling companies do not fall under this definition, any fees associated with their services must be factored into the vehicle's advertised offering price.

## Fees & Charges (continued)

### **Are "broker fees" required to be included in the initial "offering price" of a vehicle advertisement?**

No. "Broker fees" do not need to be included in the vehicle's initial advertised "offering price" unless the dealer knows that a broker will be used to sell that particular vehicle. A dealer typically does not become aware of a brokered deal until a stage much later than the initial advertising of the vehicle. However, it is essential to note that under the CARS Rule, the broker fee is subject to other disclosure requirements, including the requirement to obtain express, informed consent from the consumer for the charge. Additionally, it is advisable to review the laws in your state regarding vehicle brokering, as these can vary and may have specific requirements or restrictions.



# Vehicle Pricing

## **Is it compliant with the new regulations to advertise a vehicle only at its MSRP without including the actual “offering price”?**

No. Listing only the MSRP, without separately listing the specific “offering price” of the vehicle, would violate the Rule. For example, dealers who have been advertising new vehicles by only stating the MSRP, along with a disclaimer that this is not the dealer's asking or advertised price, will need to revise their advertising methods after the effective date. The specific “offering price,” which is a distinct figure from the MSRP, must be clearly stated in the vehicle advertisement. Please refer to the questions and answers below for additional clarification.

## **Can dealers still list the MSRP on a specific vehicle advertisement?**

Yes, dealers can list the MSRP, but they must *also include* the “offering price”. The Rule does not prohibit showing the MSRP, but it cannot be used in lieu of the offering price. The offering price is a distinct figure that must encompass all mandatory add-ons and non-governmental fees, like dealer documentation and destination fees.

We are aware that many manufacturers require that dealers list the MSRP, and this practice can continue. However, dealers will now be required to show a separate offering price. This price is the total cash amount the dealer is asking for the vehicle, inclusive of all mandatory add-ons and any other dealer fees, such as pre-installed accessories and document fees. Going forward, dealers might choose to calculate the offering price by adding mandatory add-ons and dealer fees to the MSRP and disclosing that the price was calculated as such.

## **If I have high-demand vehicles that often sell for more than the sticker price, can I advertise just the MSRP with a note clarifying that it's not the actual selling price?**

No. Such an approach would not be compliant with the Rule. The new “offering price” regulations would prohibit a dealer from selling a vehicle for more than the listed MSRP if the advertisement only displays the MSRP without the actual offering price. This practice could mislead customers by drawing them to the dealership under the impression of one price, only to find that the vehicle carries a significantly higher price upon arrival. Dealers are now obligated to include a specific “offering price” in any advertisement for a specific vehicle. This offering price must represent the total asking price, which could be higher than the MSRP, especially for vehicles in high demand. The intent of these regulations is to ensure transparency and prevent potential customer deception regarding vehicle pricing.

## Vehicle Pricing (continued)

**Is it permissible for a dealership to advertise a vehicle with a "call for price", "get your e-price", or similar statement on a button or click-through, instead of specifying an actual price?**

No. Such practices are not permissible in lieu of providing a clear and conspicuous "offering price". Statements like "call for price" or "request price" that prompt the customer to fill out a contact form rather than providing the actual offering price are prohibited. Advertisements for specific vehicles are now required to clearly display the vehicle's "offering price." This offering price must be a specific figure that includes all mandatory non-governmental fees and add-ons, such as dealer documentation and destination fees.

Further, the "offering price" in any vehicle advertisement must be displayed "Clearly and Conspicuously." The FTC defines the "Clearly and Conspicuously" standard as making the disclosure "unavoidable" to the consumer. The FTC has clarified in other cases and settlements that requiring the customer to access certain information by clicking a button or link is not "unavoidable" because the information can be "avoided" by not clicking the button or link. Therefore, placing the offering price behind a "call for price" button or similar method would violate the Rule.

**Is the requirement to list the "offering price" applicable to vehicles on a dealer's website as well as those in other types of advertisements?**

Yes, the requirement to display the "offering price" is applicable to any form of advertisement that references (1) a specific vehicle or (2) a group of vehicles when financing terms are included. This Rule encompasses any advertising mediums, such as email ads, newspaper ads, vehicle finance specials on a dealer's website, search result pages (SRPs), the dealership's online vehicle description pages (VDPs), and other forms of online advertising.

**If I properly advertise a vehicle with a specific "offering price," do these rules prohibit me from selling the vehicle below its offering price?**

No, nothing in these rules prohibits the dealer from selling below the advertised offering price. However, selling above the offering price would be considered a misleading or deceptive practice.

## Vehicle Pricing (continued)

### **Is it required for the price displayed on a dealer pricing label or pricing addendum on vehicles in the dealership lot to include the "offering price"?**

Yes. The "offering price" must be clearly disclosed in any form of advertisement or communication that refers to a specific vehicle. This includes pricing labels or addendums attached to vehicles on the dealership lot. Therefore, the price indicated on any dealer pricing label or addendum must encompass the "offering price," which includes all mandatory add-ons and dealer fees. The only exception to this inclusion is any required governmental charge, which can be excluded from this amount.

### **Does the requirement to display the "offering price" apply to displaying vehicle ads in paid search results, such as Google Ads and similar platforms?**

Yes. The Rule mandates that the "offering price" must be clearly and conspicuously disclosed in any form of advertisement or communication that references a specific vehicle. This requirement would extend to online paid search advertisements, such as those displayed via Google Ads or other advertising platforms. Therefore, when dealers use Google Ads or similar services in their marketing campaigns to display vehicles and prices, they must ensure that the advertised price in these ads includes the full "offering price" of the advertised vehicle, which includes incorporating all mandatory add-ons and dealer fees into the advertised price.

### **Does the requirement to display the "offering price" apply to displaying vehicle ads displayed on a social media platform?**

Yes. The Rule mandates that the "offering price" must be clearly and conspicuously disclosed in any form of advertisement or communication that references a specific vehicle. This requirement would extend to ads displayed on social media platforms.





## Vehicle Pricing (continued)

### **Should the cost of marking catalytic converters be included in the vehicle's "offering price"?**

It depends on whether the dealer makes the marking of the catalytic converter an "optional" or "mandatory" service. Recent laws in various states require dealers to mark catalytic converters with the vehicle's VIN, but practices vary. For example, some states, like California, allow for the customer to decline the service from the dealer.

If a dealer treats the marking of catalytic converters as a "mandatory" service by pre-marking all converters in its inventory, then the cost of this service must be included in the vehicle's "offering price." This is because mandatory services or add-ons are considered part of the total cost of the vehicle.

On the other hand, if the dealer practices allow customers to opt out of or decline the catalytic converter marking service, it is an "optional" add-on. In this case, the cost of the service is not required to be included in the offering price. However, the dealer would need to comply with disclosure requirements for optional add-ons. This includes providing a clear and conspicuous disclosure that the service is optional and not a necessary purchase.

### **Does the CARS Rule require that I call the advertised price the "offering price" or can I call it something else?**

The CARS Rule doesn't mandate using the term "offering price" for the advertised price of a vehicle. You have the flexibility to use a different term, as long as it aligns with the FTC's definition. The "offering price", as defined by the FTC, is the "full cash price for which a Dealer will sell or finance the Vehicle to any consumer, provided that the Dealer may exclude only required Government Charges."

### **Can the MSRP and "offering price" be the same dollar amount?**

Yes, the MSRP can be the same as the "offering price," but it's important to distinguish between the two. The "offering price" is a comprehensive figure that includes non-governmental fees like document fees, along with any mandatory add-ons. It does not include governmental charges like taxes or registration fees. A customer cannot pay more than the offering price, excluding government charges. If you choose to advertise a vehicle with an offering price equal to the MSRP, you must include the non-governmental fees within this price, effectively covering these costs yourself.

## Vehicle Pricing (continued)

**If a vehicle's "offering price" encompasses all dealer charges and mandatory add-ons, is it necessary to itemize these charges and add-ons separately in the advertisement?**

No, the FTC has indicated that there's no requirement to individually list each non-government charge and mandatory add-on within the offering price. The primary aim is to ensure transparency by incorporating these dealer fees and mandatory add-ons into the offering price. This approach is intended to prevent any unexpected costs for the customer at the time of purchase, ensuring they are fully aware of the total price upfront.

**If a vehicle on our lot includes an addendum that shows a price inclusive of add-ons, how should we determine the "offering price" for that vehicle?**

If a vehicle has an addendum displaying a price that includes add-ons, the "offering price" must be determined based on the nature of these add-ons. You need to categorize the add-ons into "mandatory" and "optional." The "offering price" should include all mandatory add-ons. However, optional add-ons do not have to be included in the offering price. Instead, they require clear disclosures. You must inform the consumer that these optional add-ons are not necessary for the purchase or lease of the vehicle. Additionally, you need to disclose the total cost of the vehicle both with and without these optional add-ons, ensuring the customer understands they have the option to purchase or lease the vehicle without these additional features.

**Can the advertised "offering price" of a vehicle be the sum of its Manufacturer's Suggested Retail Price (MSRP) and all dealer fees, making it higher than the MSRP?**

Yes, you can advertise the "offering price" as the MSRP plus all non-government charges and mandatory add-ons, which will result in the offering price being higher than the MSRP. The CARS Rule does not prohibit listing the MSRP, but does prohibit listing only the MSRP without including the vehicle's "offering price." It's important to remember that the MSRP and the "offering price" are separate figures. For example, it's not compliant to display only the MSRP and then mention additional dealer fees, like document fees, in a disclaimer.

**If a customer asks about a vehicle in-person and does not know about the online "offering price," can I sell the vehicle at a price higher than the online offering price?**

No, it is not permissible. Selling a vehicle at a price higher than the one advertised on the dealership's website, regardless of whether the customer is aware of the online offering price, would be considered an unfair and deceptive practice. (continued on next page)

## Vehicle Pricing (continued)

This principle applies even if the customer has not seen the advertised price prior to visiting the dealership. The advertised offering price should be honored consistently to ensure fair and transparent transactions.

### **Does the “offering price” requirement of the CARS Rule apply equally to both new and used vehicles?**

Yes, the “offering price” requirement applies equally to both new and used vehicles.

### **Is it permissible to advertise the “offering price” of a used vehicle solely with a QR code that links to the Vehicle Detail Page (VDP) for pricing information?**

Probably not. The rule stipulates that the “offering price” and its required disclosures must be presented in a manner that is clear, conspicuous, and “unavoidable.” The FTC has clarified that disclosures which are accessible only through a link or button do not meet the “unavoidable” criterion, as consumers can simply choose not to click the link or button. Applying this reasoning to a QR code suggests that using a QR code as the sole means of providing pricing information would likely not comply with the rule. The price and disclosures should be directly visible in the advertisement itself, without requiring additional actions like scanning a QR code.

### **Does the CARS Rule impact the requirement to display Monroney labels on new vehicles in a showroom? Is there an obligation to also show an “offering price” on the label?**

No, the CARS Rule does not alter the existing federal requirements regarding Monroney labels. These labels, which provide detailed information about the vehicle, are a distinct federal mandate and remain unaffected by the provisions of the CARS Rule. Therefore, the CARS Rule does not impose any new requirements on dealers to display an “offering price” on Monroney labels. The Monroney label requirements and the CARS Rule operate independently of each other.

### **Is it necessary for dealers to include an “offering price” in advertisements for lease specials?**

No. The “offering price” is specifically defined as the total cash amount for which a dealer is willing to sell or finance a vehicle. This concept doesn't apply to leases, as leasing does not involve paying the full cash value of the vehicle. In lease situations, customers are making payments for the use of the vehicle over a certain period, rather than purchasing it outright or financing its total cost.

# Rebate and Discount Advertising

## **Is it acceptable to continue advertising rebates with limited eligibility, including incorporating them into the advertised price?**

Yes. It is acceptable to advertise rebates with limited eligibility, including integrating them into the advertised price, provided that the conditions and limitations of these rebates are clearly and conspicuously disclosed.



The FTC outlines two scenarios in relation to rebates and discounts of limited eligibility: one where they are advertised separately from the price, and another where they are included in the advertised price. The FTC initially stated that both practices would violate the CARS Rule because the rebates are not universally available to all consumers. However, the FTC later clarifies that while the CARS Rule prohibits misrepresentations, it does

not prevent dealers from truthfully advertising rebates or discounts that have limitations, as long as these are represented truthfully and their limitations are made clear and conspicuous to consumers. Therefore, advertising rebates of limited availability, whether included in the “offering price” or advertised separately, should be permissible as long as any eligibility limitations of the rebate or discount are clearly and conspicuously displayed. This applies to various types of rebates like loyalty, conquest, college graduate, EV, or those contingent on financing through a specific lender. This should also apply to listing dealer or manufacturer employee rebates and discounts, particularly for dealers that are in close proximity to manufacturer plants and facilities.

In short, dealers can advertise such rebates as long as there is no concealment of eligibility requirements or inclusion of such a rebate in the price. A practical approach for online compliance is to display potential rebates alongside the vehicle price, allowing customers to select applicable rebates while clearly displaying the conditions of each.

# Customer Communications

## **Must dealers disclose the “offering price” in their first communication with a customer about a specific vehicle, even if the customer doesn’t request pricing information?**

Yes. Dealers are required to provide the “offering price” of the vehicle in the first communication or response to a consumer concerning a specific vehicle, regardless of whether the consumer asked for this information. However, if the consumer’s inquiry is not about a specific vehicle, or if it pertains only to a general make and model, then the dealer is not obliged to provide a specific offering price.

## **Does the “first communication” rule apply equally to emails, text messages, phone calls, and in-person communications?**

Yes. This requirement of the Rule applies to all communications with a customer.

## **How does the CARS Rule, which mandates listing a vehicle’s “offering price” in the dealer’s “first communication” with a consumer, interact with the federal opt-in requirements for text messaging and email communications as outlined in the TCPA and CAN-SPAM Acts?**

The opt-in requirements of the Telephone Consumer Protection Act (TCPA) and the Controlling the Assault of Non-Solicited Pornography And Marketing (CAN-SPAM) Act do not impact this requirement. The CARS Rule’s “first communication” requirement becomes relevant only when either the dealer or the customer mentions a specific vehicle. For instance, if a dealer’s initial communication is simply to request permission for text messaging and does not mention any specific vehicle, then the dealer is not obliged to list the offering price in that communication. However, if a customer initiates contact with the dealership inquiring about a specific vehicle via text or email, the dealer is required to provide the offering price in their response. In this case, TCPA rules, which govern unsolicited messages, would not apply since the communication was solicited by the customer. Thus, the dealer’s response should include the offering price of the vehicle as per the CARS Rule.





# Monthly Payment Rules

## **Can dealers still advertise the monthly payment as a formula, such as “\$27.78 per month per \$1,000 financed” on a vehicle finance special?**

No. There are a few reasons this practice is incompatible with the new regulations:

- 1. Disclosure of Total Payment Obligation:** The regulations clearly state that any mention of monthly payment, whether indirectly or implied, necessitates the disclosure of the total sum the customer will pay over the loan's duration after making all payments. Utilizing a formulaic approach does not enable the disclosure of this total amount, as it is not derived from a specific monthly payment figure.
- 2. Downpayment and Offering Price Requirements:** The regulations also mandate that any advertisement mentioning a monthly payment must disclose the corresponding down payment amount. Moreover, when a range of vehicles is advertised with financing terms, the specific vehicle offering price must be listed. This requirement effectively renders the formula-based approach redundant. In other words, since dealers are now required to disclose both the downpayment and the vehicle's price, the actual monthly payment can be easily determined.

This approach aligns more closely with the current methods used in advertising leasing specials, where promotions are usually based on a group of vehicles available at a uniform MSRP.

For dealers who wish to advertise financial specials applicable to vehicles with varying Manufacturer's Suggested Retail Prices (MSRPs) or prices, a viable alternative is to broadly promote specials (e.g., "0% APR financing") for a vehicle group, complemented by an example vehicle detailing the necessary elements as per the new rules, with a disclosure that it is only an example and may vary.

## **How should dealerships handle the uncertainty of future tax rates when calculating and disclosing total payments for leased or financed vehicles as required by the new monthly payment disclosure requirements?**

In advertisements, it is acceptable to exclude taxes and government fees (like title, registration, and license fees) from the monthly payment figures. This practice aligns with both existing state and federal laws and is indicated as acceptable under the new CARS Rule by the FTC. The rationale is that tax rates and certain government fees can vary by locality and may not be precisely known at the time of advertising. However, it's important that once these fees are known – typically at the point of completing paperwork at the dealership – the disclosed figures should then include these amounts.

# Recordkeeping

## **Is it really necessary for dealers to retain all quotes given to customers via email, phone, and text for two years?**

Yes, but only for *consummated transactions*. The two-year record retention requirement stipulated by the Rule specifically covers all written correspondence between the dealer and customers that resulted in the sale or lease of a vehicle. To manage this effectively, dealers might consider utilizing their Customer Relationship Management (CRM) systems for these communications. This ensures that all relevant communications are stored in a centralized location, thus making it easier to comply with the record retention requirements.

## **Are dealers required to retain text messages between sales staff and consumers, even when salespeople use personal cell phones for communication?**

Yes, dealers are indeed expected to retain such communications in *consummated transactions*. For these completed transactions, it's required to preserve all forms of communication between sales staff and consumers, which includes text messages. Given the common use of personal cell phones by sales staff for customer communications, dealers are strongly advised to implement measures that encourage their staff to use Customer Relationship Management (CRM) systems.

Alternatively, dealers *do not* have to retain text (and email) communications in transactions where a vehicle was not sold or leased (i.e. dead deals, unwinds).

## **Does digitizing records satisfy the two-year record retention requirement or are original records necessary?**

Yes. Digitizing records satisfies the two-year record retention requirement. The regulation explicitly allows dealers to keep the required records in any legible form, including digital formats. This flexibility is provided under the condition that the records are maintained in the same manner, format, or place as they are ordinarily kept in the course of business.

## **Does the record retention requirement include retaining audio or video recordings of conversations in Finance & Insurance (F&I) discussions?**

No. The record retention requirement does not extend to audio or video recordings of F&I discussions. The regulations specifically mention that only "written communications" relating to sales, financing, or leasing transactions between the dealer and the customer need to be retained. Additionally, the requirement to retain records is limited to consummated transactions only. Therefore, any audio or video recordings of conversations in the F&I process do not fall under the purview of the record retention obligations.

## Recordkeeping (continued)

### **The “consummated” and “non-consummated” transaction distinction is still confusing. What do I keep and what don’t I keep?**

Great question. Consummated transactions occur when a vehicle is sold or leased and, just as you’d think, non-consummated transactions occur when a vehicle is not sold or leased (i.e. dead deal, unwind). The FTC makes this distinction as it relates to the record keeping requirement in the following ways:

**Consummated Transactions:** All copies of purchased orders, customer signed financing and lease documents, and all written communications relating to sales, finance, or leasing between the dealer and customer.

**Non-Consummated Transactions:** Customer signed financing and lease documents.

### **Do I need to keep any records that are not related to the actual transaction?**

Yes. The FTC states that dealers need to keep the following records for 24 months that may ultimately not involve a vehicle transaction with a customer:

1. Copies of materially different advertisements;
2. Sales scripts;
3. Training materials;
4. Marketing materials regarding the price, financing, or lease of a vehicle that was used (samples can be retained to encompass various vehicles or amounts provided they are not materially different);
5. Records related to charged add-on products;
6. Copies of all service contracts;
7. Copies of all GAP agreements;
8. Copies of all calculations of loan-to-value ratios; and
9. Copies of all written consumer complaints relating to sales, financing, or leasing, inquiries into add-on products or services, and inquiries or responses about vehicles



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Booth #4649

Las Vegas, Nevada

February 1 - 4, 2024

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