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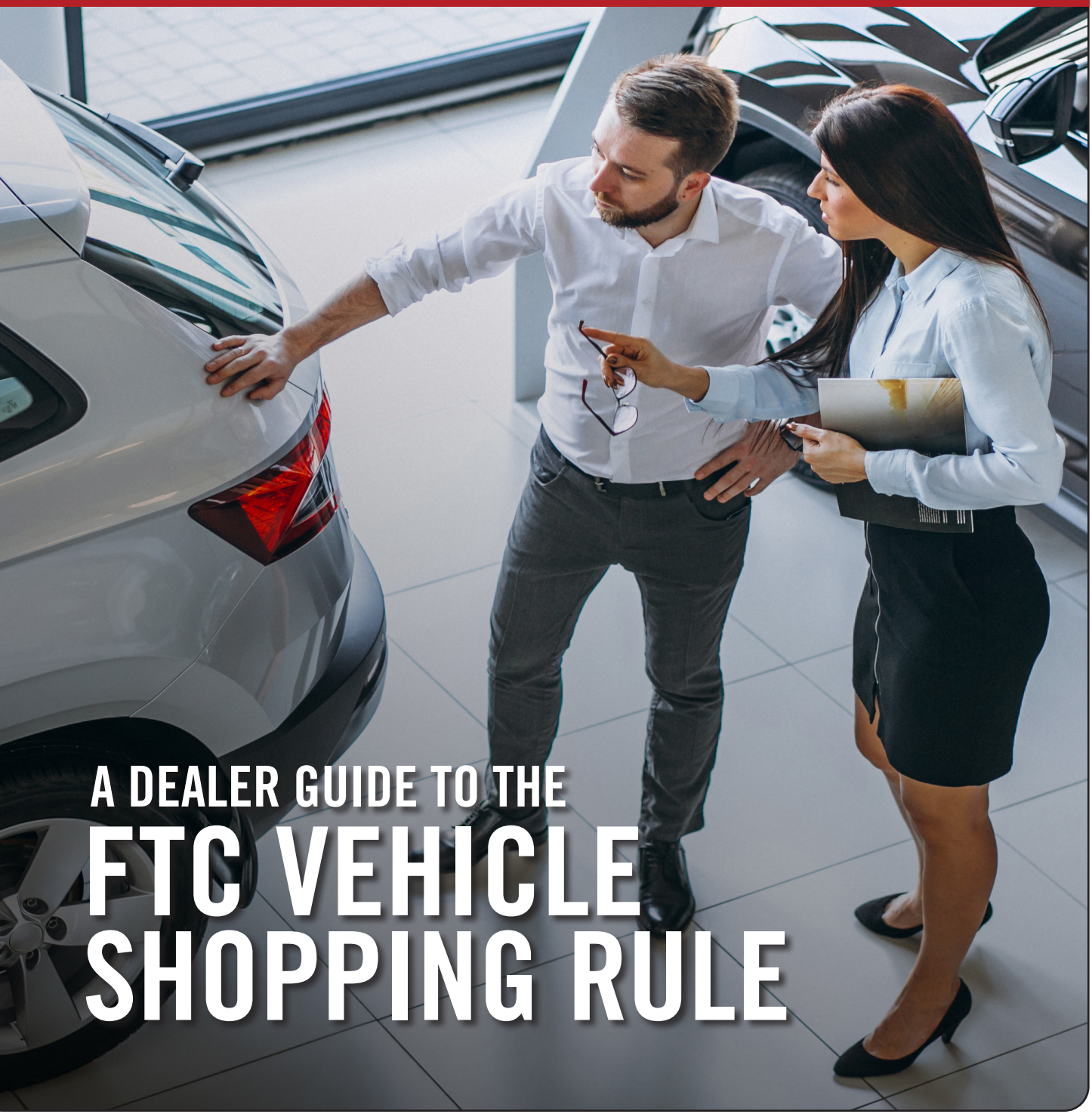
NADA MANAGEMENT SERIES L62



A DEALER GUIDE TO THE FTC VEHICLE SHOPPING RULE

NADA NATIONAL AUTOMOBILE DEALERS ASSOCIATION

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Legal Disclaimer: The following Dealer Guide (including the Appendices) explains the requirements of the Federal Trade Commission's (FTC) recently finalized Vehicle Shopping Rule (the Rule or the VSR (elsewhere referred to as the CARS Rule)), which is being challenged in federal court by the National Automobile Dealers Association (NADA) and the Texas Automobile Dealers Association (TADA). The effective date of the rule has been stayed pending the outcome of this challenge, and it is not known at the time of publication of this Guide how or when this judicial challenge will be resolved. While the rule is not presently in effect, this Guide is being presented now to ensure motor vehicle dealers have adequate time to comply with the rule in the event the legal challenge is not successful.

This guide has not been reviewed or approved by the FTC. It has been prepared for informational purposes only and is not intended as legal advice. The requirements of the VSR and the circumstances of every dealership are complex, and dealers should not simply adopt the sample disclosure forms or any of its components without first consulting with legal counsel. In addition, this guide discusses only the VSR; it does not discuss other federal, state, or local law that may impose additional requirements or requirements that may apply to a dealership by contract. Dealerships should draft and implement required policies and procedures appropriate to their operations and ensure that such procedures are reviewed by legal counsel.

Note that some of the guidance presented in this publication is from an outside compliance firm. This guidance is marked as "Compliance Tips" and is not legal or compliance advice. Instead, these tips provide practical and important regulation guidance for consideration from a compliance professional. As with all information in this guide, it is imperative that dealers consult with their legal counsel to ensure compliance with the legal requirements of the Rule and other relevant legal requirements.

The presentation of this information is not intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the cost of any good or service.

A DEALER GUIDE TO FTC VEHICLE SHOPPING RULE

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A DEALER GUIDE TO FTC VEHICLE SHOPPING RULE

I. EXECUTIVE SUMMARY

The Vehicle Shopping Rule (the Rule or the VSR (elsewhere referred to as the CARS Rule)) places a series of restrictions, prohibitions, and requirements governing advertising, consumer disclosures, and recordkeeping onto motor vehicle dealers. At a high level, the provisions of the VSR include:

1. **Prohibited Misrepresentations**: The Rule lists sixteen broad topics about which dealers are prohibited from making any misrepresentation.
2. **Disclosure Requirements**:
    a. "Offering Price" disclosure requirements: The Rule requires dealers to determine and disclose an Offering Price in any advertisement that refers to a specific vehicle, or a monetary term or payment obligation for any vehicle. It also requires that dealers disclose this Offering Price to a consumer in the "first response" to that consumer when these references arise.
    b. "Add-on" disclosure obligations: The Rule requires that when dealers make any representation about any Add-on products, dealers disclose that Add-ons are not required and the consumer can purchase or lease the vehicle without the Add-ons, if true.
    c. Monthly Payment Disclosure Obligations: The Rule also requires several different disclosures to consumers regarding monthly payments for finance or lease transactions. First, the dealer must disclose the total amount the consumer will pay to purchase or lease the vehicle, any time a monthly payment is discussed or disclosed to a consumer. Second, the dealer must also, in certain circumstances when comparing monthly payments, disclose that a lower monthly payment quote would increase the total amount a consumer would pay to purchase or lease the vehicle, if true.
3. **"Add-on" Restrictions**: Dealers are prohibited from charging for any Add-on product or service that provides no benefit.
4. **"Express, Informed Consent"**: The Rule requires dealers to obtain a higher level of consent from a consumer before charging a consumer for any "item."
5. **Recordkeeping Requirement**: Dealers must create an array of records necessary to demonstrate compliance with the Rule and must retain those records for 24 months, including records related to advertisements and marketing materials, purchase orders and finance and lease agreements, consumer communications, and more.

II. INTRODUCTION AND LEGAL BACKGROUND

In July 2022, the Federal Trade Commission (FTC) proposed the "Motor Vehicle Dealers Trade Regulation Rule" (Proposed Rule) governing motor vehicle dealers. The Proposed Rule sought to impose onerous new disclosure, recordkeeping, advertising, and other restrictions and requirements on dealers. While many of the requirements of the Proposed Rule mirrored then-existing FTC guidance and enforcement actions, the Proposed Rule went further in many ways, adding numerous new disclosure and recordkeeping requirements that were confusing and burdensome.

Following NADA's extensive government advocacy, the FTC issued a revised, final trade regulation rule on January 4, 2024. The final rule omitted several problematic provisions but retained many of the onerous provisions in the proposed rule.

The FTC promulgated this final rule as the "CARS Rule."[1] Given the derogatory connotation of that name, NADA and other stakeholders in the auto retail industry refer to this rule as the Vehicle Shopping Rule (VSR or Rule). Violations of the VSR purport to subject a dealer to fines of over $50,000[2] per violation as well as claims for "consumer redress" and other relief.

As of the publication date of this Guide, NADA and the Texas Automobile Dealers Association (TADA) are challenging the Rule in court, and as a result, the FTC delayed the Rule's effective date by issuing a stay order. However, in the event that the legal challenge fails and the stay order is lifted, NADA is issuing this Guide to help educate dealers regarding the Rule's arduous requirements on dealers should the Rule take effect.

III. SCOPE OF THE RULE

The VSR is a rule that applies only to the advertising and sales of "Covered Motor Vehicles" (also referred to as "vehicles") that are sold through "Covered Motor Vehicle Dealers" (also referred to as "dealers" or "dealerships"). Each of these terms is defined in the Rule.

Covered Motor Vehicle Dealers

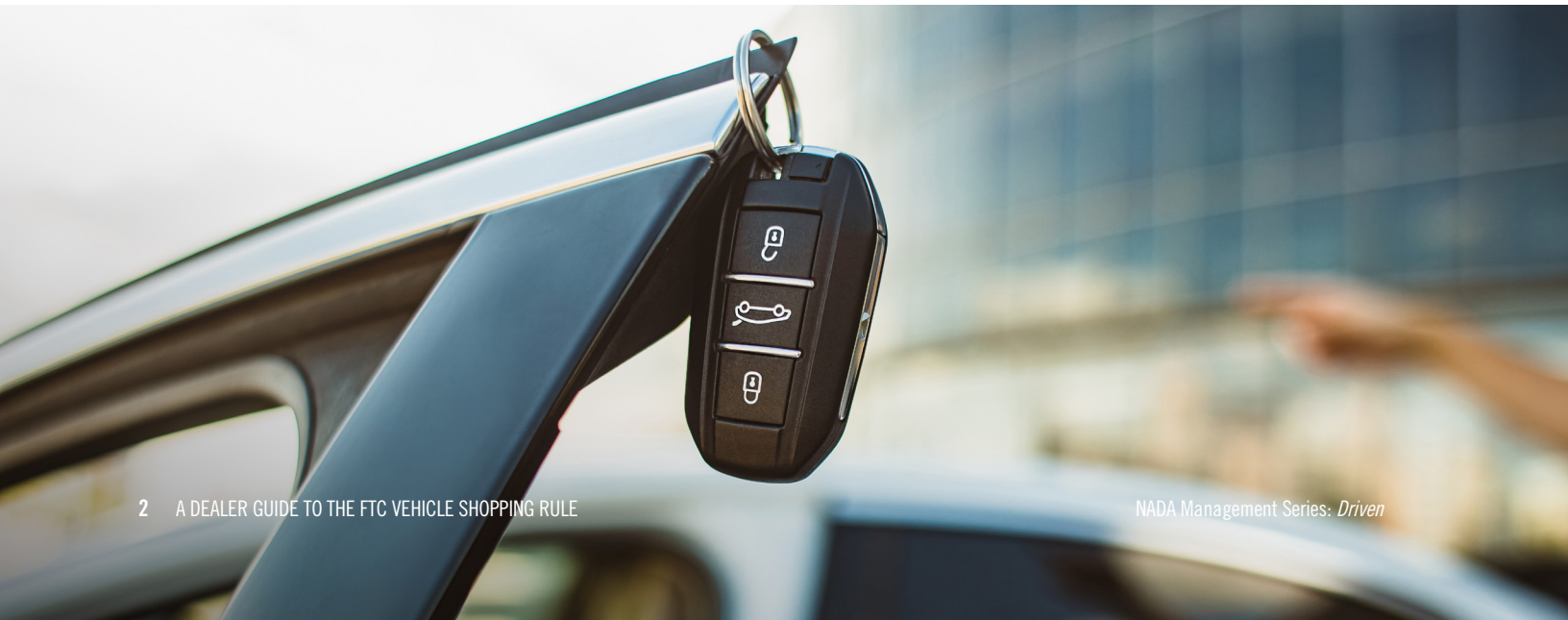
Most NADA members fit into the definition of a "Covered Motor Vehicle Dealer" and therefore are subject to the requirements of the Rule.

A dealer (including an individual person or entity) is a "Covered Motor Vehicle Dealer," and thus covered by the Rule, if they: (a) are licensed by a state, a territory of the United States, or the District of Columbia to engage in the sale of Covered Motor Vehicles; (b) take title to, hold an ownership interest in, or take physical custody of Covered Motor Vehicles, and: (c) are predominantly engaged in the sale and servicing of Covered Motor Vehicles, the leasing and servicing of Covered Motor Vehicles, or both.[3] An entity must meet all three requirements to be covered by the Rule.

Note that a dealer is not required to have a service department to be covered by the Rule because the FTC asserts that the term "servicing" includes "activities undertaken by essentially all used car dealers" because it includes "checking and repairing a vehicle…to keep it in good condition."[4] In the FTC's view, therefore, checking Covered Motor Vehicles or performing pre-sale inspections or reconditioning would qualify as "servicing" for purposes of the Rule.[5]

While the definition of Covered Motor Vehicle Dealer applies to the dealership entity, the Rule would apply to misrepresentations, disclosures, or other violations of the Rule by (a) individual dealership employees made in their role as employees or (b) third parties as agents acting on behalf of the dealership.[6] Therefore, the Rule is not limited to any particular corporate behavior or only to formal dealership advertising efforts; it applies to the statements and behavior of dealership employees acting in the scope of their employment. For example, a dealership salesperson who attends a party or private event during non-working hours and responds to questions from another person about a specific vehicle (or a payment or financing term) would need to ensure that any relevant communication would meet the requirements of the Rule.

These same considerations apply to a dealer's outside vendors. For example, as detailed below, the Rule contains extensive requirements and prohibitions in dealer advertising.



Many dealers outsource their advertising content to outside advertising companies. While there have been limited instances where the FTC has held the advertising agency itself liable for advertising violations,[7] the dealership will generally be responsible for the content of its advertising.

Dealers are likely to rely on a variety of outside vendors to meet their diverse obligations under the Rule. Although these third parties are not explicitly subject to the Rule, they need to be well-versed in its requirements. Whether it is a Dealer Management System (DMS), Customer Relationship Management (CRM) tool, texting or other consumer communication platform, website provider, recordkeeping and data storage vendor, compliance vendor, attorney, or any other third party, dealers must ensure that these vendors receive and adhere to appropriate guidance from the dealership. Ultimately, the dealership on whose behalf the outside third party is acting will be held responsible for compliance under the Rule.

What About the Original Equipment Manufacturer (OEM)?

While many manufacturers may not be considered "Covered Motor Vehicle Dealers" under the Rule, their role in advertising could create compliance challenges for dealers. Advertising that is mandated or provided by manufacturers may contravene the Rule when adopted unchanged by dealers. Therefore, it is essential for dealers to work closely with their manufacturer partners and OEM advertising agencies about the compliance risks associated with manufacturer-generated advertising. If a dealer employs advertising content created or supplied by a manufacturer, the responsibility for ensuring the advertisement's compliance falls on the dealer. In instances of noncompliance, the dealer should not assume they can use the manufacturer's origination of the advertisement content as a defense against allegations of violating the Rule.

Covered Motor Vehicles

A Covered Motor Vehicle is defined as "any self-propelled vehicle designed for transporting persons or property on a public street, highway, or road." It does *not* include "recreational boats and marine equipment; motorcycles, scooters, and electric bicycles; motor homes, RV trailers, and slide-in campers; or golf carts." Notably, this definition does not specifically exclude medium or heavy duty trucks, tractors, or trailers.[8]

Does the Rule Apply to Heavy Duty Truck Dealers?

As of the time of the publication of this Guide, it is unclear whether the Rule applies to members of NADA's American Truck Dealer (ATD) division (medium and heavy duty truck dealers) and commercial transactions and non-consumer advertisements. NADA and ATD are actively working to clarify this issue and will provide guidance to ATD members as it becomes available.

While it seems clear that the Rule should only apply to consumer transactions, and many of the requirements apply by their terms to "consumers," the final Rule is not expressly limited to advertisements or sales for personal, family, or household use. It is unclear whether this means that the Rule is intended to apply to commercial transactions.[9]

What Are the Penalties for Violations of the Vehicle Shopping Rule?

The Rule states that it is a violation of Section 5 of the FTC Act to "violate any applicable provision of [the Rule], including the recordkeeping requirements." Violations of the Rule may subject a dealer to monetary penalties of over $50,0000 per violation, as well as claims for "consumer redress."[10]

It is unclear what would constitute a separate "violation" under the Rule, but it could mean per day, per misrepresentation, per disclosure violation, etc. Consumer redress means that the FTC would seek to recover money the dealer charged in connection with the violations and return that money to consumers. Consumer redress includes "such relief as…necessary to redress injury…resulting from the rule violation," including the "rescission or reformation of contracts, the refund of money or return of property [or] the payment of damages."[11]

Notably, there is no federal private right of action to enforce violations of the VSR. In other words, dealers cannot be sued directly by consumers or other private parties for violations in federal court, with the cause of action based on the Rule itself. However, in a number of states, consumers can bring state actions (even class actions) under state law, based on a violation of the Rule.[12]

IV. STATE LAW AND FEDERAL PREEMPTION CONSIDERATIONS

The Rule addresses areas, such as advertising, which are already heavily regulated under many state laws. What if the Rule conflicts with a law in a dealer's state, or if one contains broader requirements than the other?

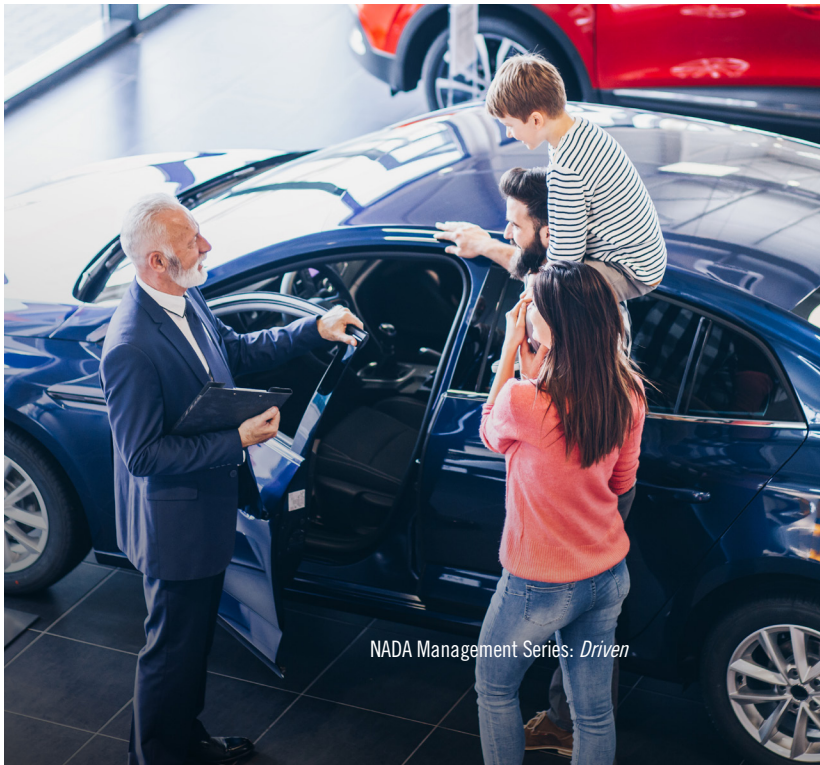
The Rule expressly provides that it supersedes (or preempts) state and local laws that are *inconsistent* with the Rule.[13] It further states that a state or local law is not inconsistent with the Rule if the protection provided to a consumer by such state or local law is greater than the protection provided by the Rule.[14] Thus, the Rule is intended to act as a national baseline of protection while leaving room for individual states to enact (or keep) statutes that provide "greater" protections to consumers. The FTC has not provided extensive guidance on this issue and while it may appear to be simple and straightforward on its face, in practice there are some instances where determining whether a state or local law affords greater protection than the Rule can be difficult.

One such example is the "Offering Price" requirement. As discussed in greater detail in Section 7, the Offering Price is defined as "the full cash price at which a dealer will sell or finance the vehicle to any consumer," and the Offering Price may only exclude "required Government Charges."[15] Government Charges are limited to those fees and charges imposed by federal, state, or local government agencies.[16] For instance, under the Rule, dealer-charged document processing fees must be included in the Offering Price because they are not imposed or required by the government. And they must be included whether or not a state law sets the amount of the document processing fees, regardless of what the fees are called, or whether the state or local law requires any specific disclosure regime for the fees.

The requirement to include document processing fees in the Offering Price seems to conflict with some state requirements which *prohibit* including document processing fees in the Offering Price.[17] These states take the view that because the document processing fee is negotiable, including it in the Offering Price could suggest that it is either not negotiable, or that the government requires the fee to be imposed. In this instance, it is unclear which approach provides "greater protection" to the consumer since both approaches indicate that they are intended to protect consumers.

While the FTC notes in its commentary on the Rule that there were questions about how to determine whether a state law affords "greater protection" than the Rule,[18] the FTC does not answer those questions directly; instead, the FTC cites other federal laws and regulations that have similar "greater protection" language.[19] The FTC also states that its analysis of the Rule (published with the final Rule) provides a "framework" for addressing inconsistencies between the Rule and state law. To that end, the FTC states that the preemption provisions of the Rule are triggered "if there were an actual inconsistency between state law and the Final Rule. . . ."[20]

The effect of the Rule's preemption of state law is clearer in states that *permit* but do not require the exclusion of document processing fees from the advertised price of vehicles.[21] There, the Rule and state law do not conflict; rather, dealers may comply with both the state law and the VSR by disclosing the Offering Price (which must include the document processing fee) and any additional state-required information, such as the amount of the dealer document fee so long as the Offering Price remains clear and conspicuous, and any additional information is truthful and non-misleading.[22]



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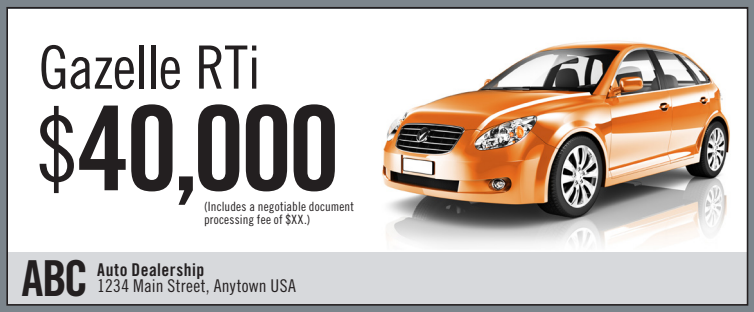
Compliance Tip

A practical approach for dealers faced with the inconsistency created by a state law prohibiting the inclusion of doc fees in the advertised price could be to consider including the fee in the Offering Price as required under the Rule, with a clear and conspicuous disclosure in close proximity to the Offering Price noting that the Offering Price includes the document processing fee (and potentially a separate disclosure of the fee amount, along with any other state-required disclosures about the document processing fee).[23]



NOTE: This is only one potential approach to consider, and it has not been deemed compliant with either the Rule or any particular state law and may, in fact, not be. It is critical that dealers consult with their legal counsel regarding this or any other state law issue.

V. PROHIBITED MISREPRESENTATIONS

The Rule explicitly prohibits "any misrepresentation, expressly or by implication, regarding material information about" sixteen specific categories of issues listed in the Rule.[24]

These prohibitions do not make every misrepresentation a violation of the Rule, but only misrepresentations about material information. Under the Rule, information is material if it is likely to affect a person's choice or conduct regarding goods or services.[25] For an express or implied misrepresentation regarding material information to violate the Rule, it must mislead consumers acting reasonably under the circumstances concerning material information.[26] Further, misrepresentation claims are actionable only if they are material to consumers' decisions and likely to mislead consumers acting reasonably under the circumstances. The FTC need not prove actual injury to customers.[27]

The intent of the person making the misrepresentation is irrelevant in determining whether a violation of the Rule has occurred. The FTC emphasizes that because the primary purpose of Section 5 of the FTC Act is consumer protection, the intent to deceive or mislead is not a necessary element for a Section 5 violation (or a violation of the Rule).[28] If a statement or representation can be interpreted in multiple ways by a reasonable consumer, and one of these interpretations is false, the speaker can be liable for the misleading interpretation.

What is an "Implied Misrepresentation"?

As noted above, a statement about material information may violate the Rule if it is an express misstatement – that is, an affirmative statement that misstates a fact. But the Rule also applies to any "implied" misstatement. The FTC provides an example of implied misrepresentation:[29]

> "…if a dealer offers discounted coffee for customers who visit its dealership before 10 a.m. and honors that offer, but makes no representations, expressly or by implication, about discounted cars, the dealer will not have violated § 463.3(d), which prohibits express or implied misrepresentations regarding rebates and discounts, even if a consumer holds an unreasonable belief that the offer was for discounted cars.
>
> On the other hand, if a dealership's advertisement depicts a car with a consumer standing next to it holding a cup of coffee, and states,

(continued on next page)

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> "10% discount available before 10 a.m.," such an advertisement can convey several representations that may mislead reasonable consumers, including that the car is available at a 10% discount."[30]

This example, along with the enforcement actions for "implied" claims cited by the FTC, suggest that an implied misrepresentation is most likely to be found (a) in an advertisement, and (b) where some visual cue, picture, or representation that a reasonable customer could interpret to be making a misrepresentation of some kind.[31] This does not mean that implied misstatements are limited to advertisements, but dealers and their advisors should take particular care to review advertisements not only for affirmative misstatements but for any implications that could be drawn by a reasonable consumer based on the ad.

The Rule prohibits misrepresentations – both express or implied, in advertisements, or in direct communication with consumers at any point during the shopping or purchase/lease process – about the following categories:[32]

Costs or terms of purchasing, financing, or leasing a vehicle.

Any costs, limitation, benefit, or any other aspect of an Add-on product or service.

Whether the terms are, or the transaction is, for financing or a lease.

Availability of any rebates or discounts that are factored into the advertised price but not available to all consumers.

Availability of vehicles at an advertised price.

Whether any consumer has been or will be preapproved or guaranteed for any product, service, or term.

Any information on or about a consumer's application for financing.

When the transaction is final or binding on all parties.

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 engage in a transaction.

Whether or when a dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle.

Whether consumer reviews or ratings are unbiased, independent, or ordinary consumer reviews or ratings of the dealer or the dealer's products or services.

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 United States Department of Defense or its Military Departments.

Whether consumers have won a prize or sweepstakes.

Whether, or under what circumstances, a vehicle may be moved, including across State lines or out of the country.

Whether, or under what circumstances, a vehicle may be repossessed.

Any of the required disclosures identified in this part.

The discussion of these categories below provides only an overview of this prohibition. These categories are broad, and cover most of the communications dealers have with consumers regarding the sale or lease of vehicles at a dealership.

Costs or terms of purchasing, financing, or leasing a vehicle.

The first category includes misrepresentations about "the costs or terms of purchasing, financing, or leasing a vehicle." This category is very broad and would include any misrepresentations about "among other things, a vehicle's total cost, down payments, deposits, interest rates, repayment schedules, the price for added features, other charges, certainty or finality of terms, and the availability of discounts,"[33] as well as the availability or cost of outside "indirect" financing.[34]

The FTC notes that while this provision prohibits misrepresentations, it does not require any "particular affirmative disclosures, whether written or oral."[35] However, while particular affirmative disclosures are not required in all instances, an affirmative disclosure would be required when needed to avoid an implied misrepresentation.

Dealerships should ensure that not only are advertisements accurate and up to date, but that other dealer systems are similarly updated, so that dealership employees can avoid allegations that they have misrepresented a cost or other term.

Again, this applies not only to express or implied representations in advertisements, but also to those made directly to consumers by dealership employees.

Any costs, limitation, benefit, or any other aspect of an Add-on Product or Service.

This category applies broadly to statements about "Add-on Products"[36] or "Services."[37] "Add-on products" are not limited to F&I products but include *anything* provided to the consumer or installed on the vehicle that was not provided or installed by the manufacturer for which the dealer, directly or indirectly, charges a consumer in connection with a vehicle sale, lease, or financing transaction.[38] This includes all physical Add-on products, software or software updates, subscriptions, and services provided by the dealer, as well as any F&I or related products.

Misrepresentations prohibited by this section include, but are not limited to:

- Misrepresentations about a consumer's ability to cancel Add-on products and services.[39]
- Misrepresenting whether Add-ons are required to purchase or lease a vehicle.
- Misrepresenting that advertised prices do not include fees beyond taxes, only to subsequently require the purchase of Add-ons.
- Misrepresenting what is, or what is not, covered by, for example, an extended service contract.
- Misrepresenting that consumers have provided express, informed consent to be charged for Add-ons. (*See* discussion below).

Compliance Tip

To mitigate the risk of misrepresentations, dealers may consider implementing measures to ensure that discussions about any specific products or services offered by the dealership take place in a controlled environment, such as the F&I office, regardless of whether the products are F&I-related or not. These discussions should be conducted by personnel who have received proper training to avoid making any misleading or false statements.

Remember that while salespeople or others in the dealership may wish to help customers, under the Rule, any conversations with consumers about any of these sixteen topics creates risks to the dealership that should be controlled by avoiding any such conversations outside of a controlled environment. This may unfortunately impair dealers' ability to help consumers, but all dealership personnel should be trained to explain why they are unable to discuss these issues when asked by consumers.

This section also prohibits misrepresentations about "lifetime" benefits programs.[40] Such programs should be qualified by a disclosure with any material conditions, restrictions, and limitations.

"Lifetime" warranties or guarantees can be ambiguous for consumers, as the term can be interpreted in several ways. For instance, it may refer to the life of the product, such as a car muffler, lasting either for the vehicle's lifespan or as long as the original purchaser owns the car. Less commonly, it might refer to the lifetime of the original purchaser.

To prevent confusion, advertisers are advised to clearly specify the basis of the "lifetime" coverage in their promotions and explain clearly to consumers the scope of any such coverage, including the intended duration of the warranty or guarantee.[41]

Finally, dealers should use caution when advertising "free" or "no additional charge" goods or services in connection with the purchase or lease of a vehicle.[42] The FTC has, in the past, prohibited the use of the term "free" in transactions such as vehicle sales and leases, where the prices and terms are negotiable, arguing that goods and services transacted with the sale/lease are included in the ultimate price of the vehicle.

Compliance Tip

The FTC and other regulators have consistently scrutinized industry practices regarding Add-ons. Enforcement actions have been initiated against dealerships and other parties for practices such as failing to disclose Add-ons in contracts, falsely claiming Add-ons are mandatory for vehicle purchase, delays or refusals in canceling Add-on contracts, and misrepresenting Add-on coverage.[43] Dealers should ensure that their staff is well-trained on Add-ons and that third-party Add-on providers' advertising and practices are free from misrepresentations and comply with relevant laws and regulations as part of their due diligence.

Whether the terms are, or the transaction is, for financing or a lease.

This prohibition is relatively straightforward, but dealers should exercise caution to avoid running afoul of this prohibition unintentionally by failing to clearly note when a promotion relates to a lease or financing offer in advertisements that include financing terms or monetary payment amounts. The enforcement actions that the FTC has brought related to this issue in the past generally involved advertisements that allegedly "concealed that [attractive terms in ads] were for lease offers only," or otherwise promoted "key terms" that were not "generally available."[44]

All advertisements should include a clear notice stating conspicuously whether the advertised terms are for a sale or lease.[45]

However, dealers should also not overlook the risk of similar confusion in direct communications with consumers. It can be easy for dealership personnel to forget or fail to fully appreciate that the distinction between leases and sales is not always clear to consumers. Dealership personnel should be trained to ensure that discussions with consumers about any payment or other terms include clear notice whether that is a sale or a lease - and dealer systems and documents should be reviewed to ensure that this distinction is made clearly and conspicuously, especially when multiple options (both sale and lease) are being discussed with a consumer in the course of a purchase or lease decision.

The availability of any rebates or discounts that are factored into the advertised price but not available to all consumers.

This subsection prohibits misrepresentations regarding material information about the availability of rebates or discounts and prohibits incorporating a limited rebate or discount into the advertised price, or advertising a limited rebate or discount separately without disclosing that it is limited.[46]

The FTC states that this section aims to prevent dealers from advertising rebates and discounts in a misleading manner, including when such rebates or discounts are not available to the typical consumer, or apply only to the most expensive versions of the make and model.[47] By prohibiting misrepresentations about the availability of these incentives, the FTC seeks to protect consumers from being lured to dealerships under false pretenses and wasting time pursuing deals they do not actually qualify for.[48] The FTC's concern is misrepresentations regarding the availability of rebates and discounts, not the mere advertising of limited rebates or discounts in general.[49]

The FTC states:

> "[The Rule] prohibits misrepresentations; it does not prohibit a dealer from advertising, in a truthful manner, rebates or discounts with limitations. Thus, this paragraph allows for the representation of

limited offers, as long as such representation is truthful, and any limitations are clear and conspicuous to consumers."[50]

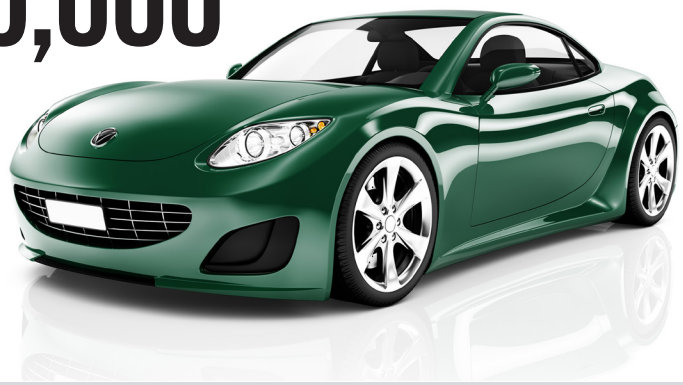
This provision appears to allow dealers to show the Offering Price and calculation of the net cost after applying a limited rebate or discount, provided that the rebate or discount's material conditions are stated clearly, conspicuously, and in close proximity to where the rebate is mentioned.[51] For example, under this approach, a dealer could advertise an electric vehicle with an Offering Price of $65,000 and then show the net cost after applying the $7,500 federal EV rebate, resulting in a net cost of $57,500. However, the dealer would need to clearly and conspicuously disclose the conditions and restrictions of the EV rebate, such as the fact that it is not available to all consumers, depends on income, and other conditions in close proximity to where the rebate is mentioned. This approach should be acceptable as long as the dealer is transparent about the nature of the rebate and its limitations.[52]

What does all this mean?

1. Likely Acceptable Example: Offering Price with Rebate Disclosure:

CYCLONE SEv

Offering Price: **$65,000**



Offering Price for an EV	**$65,000**
Available Federal EV Rebate (Available only to consumers that qualify for Internal Revenue Code Section 30D Tax Credit.)	**– $7,500**
Net Cost (Assuming rebate applies)	**= $57,500**

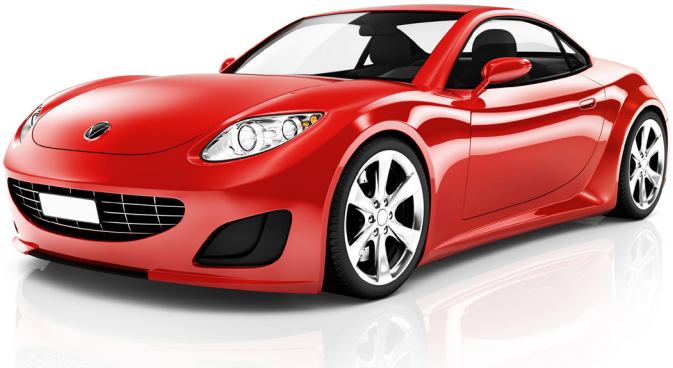
ABC Auto Dealership
1234 Main Street, Anytown USA

2. Clearly Prohibited Example: Offering Price with Rebate Disclosure:

CYCLONE SEv

$57,500

Offering Price for an EV
(Includes deduction for Available Federal EV Rebate)



ABC Auto Dealership
1234 Main Street, Anytown USA

Advertising rebates and discounts of limited availability should be permissible as long as:

1. The Offering Price is clearly and conspicuously stated in the advertisement.
2. The rebate or discount is advertised separately from the Offering Price (i.e., the rebate/discount is not included in the Offering Price).
3. All material eligibility limitations and qualifications of the rebate or discount are clearly and conspicuously displayed close to where the rebate or discount is advertised.
4. No contrary representation or impression is made in the advertisement that would imply otherwise.

Because many state laws address the advertisement of vehicle prices and rebates or discounts, dealerships should consult an attorney familiar with their state law on this issue in addition to the guidance provided above.

Although the foregoing discussion is consistent with the stated rule, there is a sentence in the FTC guidance that suggests a more conservative approach may be necessary for factoring rebates into advertised prices.[53] Dealers should work with their attorneys to determine whether and how to include a limited availability rebate or discount into an advertised price. If this more conservative approach is followed, it would prohibit the dealer from including any limited availability rebate or discount in the advertised price, or advertising rebates or discounts of limited availability as part of a net cost, separate from an advertised price. For example, if an electric vehicle has an offering price of $65,000 and a $7,500 federal EV rebate (which by its terms is not available to all consumers), a dealer could not reflect that rebate by showing an advertised price of $57,500 or implying that the price is $57,500.[54] In addition, this could also be deemed to prohibit a dealer from advertising the rebate on its own, or from noting that the net cost to the consumer for the EV would be $57,500 after application of the rebate, even if the conditions and restrictions of the rebate were clearly and conspicuously disclosed.

Further, there has been long-standing FTC guidance to avoid "rebate stacking" (listing multiple, often inconsistent rebates, and subtracting them from the advertised price). Dealers should not stack multiple limited rebates or discounts as part of a net cost calculation if the rebates are not capable of being combined or if it is unlikely that many consumers would be able to claim eligibility for all of the rebates, even if their conditions and restrictions are disclosed (e.g., listing a loyalty rebate and a conquest rebate as part of the same net cost calculation).

Dealers should also consider adding expiration dates on advertisements of rebates or discounts that are only valid for a limited period and should ensure that any advertisement that includes a rebate or discount includes clear and conspicuous disclosures about the limited nature of these rebates and discounts.

Compliance Tip

Many dealers today employ a practical approach to online compliance by displaying potential rebates alongside the vehicle's Offering Price—allowing customers to select applicable rebates while clearly displaying the conditions for each one. By default, none of the rebates are factored into the Offering Price. Instead, customers can customize their selection based on the rebates they believe they are eligible for (e.g., a service member can select the military rebate) and calculate the final price according to their self-determined eligibility. While there is no guarantee, this method seems to be a reasonable approach to comply with this section of the Rule, as it provides transparency and puts the control in the hands of the customer to determine which rebates may apply to their specific situation.

The availability of vehicles at an advertised price.

This subsection addresses the timing and nature of vehicle availability, whether a vehicle is already "reserved" or sold to another customer, and whether availability is subject to the payment of a deposit. The FTC's stated intent with this subsection is to prevent consumers from wasting their time traveling to a particular dealership to obtain a specific vehicle or a specific offer/discount when the offer or vehicle may not actually be available.[55] These types of misrepresentations are also often included in allegations of bait and switch. Dealers should

not make claims about the availability of vehicles in an advertisement without a reasonable basis at the time those claims are made.

Listing a vehicle on a dealer website could be deemed to imply that the vehicle is currently available and located at the address shown on the website - especially if there were no contrary clear and conspicuous disclosures of the vehicle's availability or location.

If a dealer is reasonably aware of circumstances that may affect the availability of the advertised vehicle, the dealer should modify the claim and/or add a disclosure, as appropriate, to avoid making an express or implied misrepresentation. Under the Rule, there is no prohibition on including "call for current availability" with a vehicle listing or advertising a vehicle that is "in transit," at a satellite location, or otherwise not immediately available for sale, but any such circumstances (location, timing of delivery, etc.) should be clearly and conspicuously disclosed to avoid an alleged implied misrepresentation under this subsection.

Compliance Tip

When utilizing an "in-transit" designation for vehicles, which may be required by OEMs, ensure that the designation is clear, conspicuous, and easily accessible to consumers. Avoid placing the "in-transit" disclosure in footnotes, hover-over text, or other methods that may be easily overlooked or require additional action from the consumer to view. Instead, prominently display the "in-transit" status in close proximity to the vehicle information, using a font size and color that is easily readable and distinguishable from the surrounding text.

This also has implications for price advertising. Dealers should consider disclosing the number of vehicles available at an advertised price if the expected demand for the vehicle can reasonably be anticipated to exceed the supply of vehicles available at the advertised price (i.e., if the vehicle's price is so low that it is likely to induce strong demand for the vehicle), or if the vehicle is a difficult-to-find model.

Compliance Tip

Dealers should also be aware of state laws that may require identification of vehicles, or the number of vehicles available, in certain advertisements, as well as state laws that might apply to advertising vehicles that are not at the dealer's retail location.

Additionally, it is essential for dealers to implement a process that ensures sold vehicles are promptly removed from their website and other online advertising platforms. This process 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. If this process is not automated at any dealership, the vehicle should be removed from the website and advertisements as soon as possible. While the Rule does not specify a time requirement, the removal should occur as soon as possible after a vehicle is sold (ideally, within 24 hours) and certainly within the time period required under state law.

NOTE: This provision applies not only to dealer websites but arguably to third-party inventory listing sites as well. Dealers and their legal counsel should work with these third parties to ensure that this integration and prompt updating occurs.

Whether any consumer has been or will be preapproved or guaranteed for any product, service, or term.

This provision also has counterparts in existing federal and state laws. This provision affects credit-related statements both in advertising and in negotiations. Dealers should not make any statements or claims that suggest the willingness or ability to provide credit to all individuals without exception, such as "we finance everyone," "no credit rejected," "your job is your credit," or similar statements. Such statements have generally been viewed as unfair and deceptive and prohibited by many state laws.

To ensure transparency and clarity, it is advisable for advertisements and disclosures to be more precise,

unambiguous, and prominently displayed. Dealers should provide specific details about the finance offer's requirements, such as minimum credit score, amount of down payment required, or financing through a captive lender. For example, if a finance offer necessitates a minimum credit score and financing through a captive lender, the advertisement should include a statement along the following lines:

"To qualify for the advertised APR of [X.XX%], you must finance through [OEM] Financial Services, have a credit score of [700] or higher, and be approved for credit. Not all applicants will qualify. Higher rates apply to applicants with lower credit scores. See dealer for complete details."[56]

Additionally, dealers should be careful not to make any statements that a customer has been "pre-approved" or "pre-qualified" for credit if a lender's approval is still needed, or if the amount of the pre-approval is not likely to cover the amount that will be financed with the purchase or lease. If a dealer or one of its advertising vendors is sending out pre-approved offers based on credit bureau information, the dealer should be aware of regulations concerning the requirements of prescreened offers of credit, including required disclosures and opt out information.[57] Another factor to consider is that "pre-approved" or "pre-qualified" offers frequently serve as lead-generation tools, often featuring numerous contingencies that require verification of income, employment, and other factors. Compliance issues may arise as these offers may misleadingly suggest that consumers are already approved when, in fact, approval depends on meeting these additional conditions. As a result, regulators may argue that such offers can be misleading to customers and therefore violate the rule.

Any information on or about a consumer's application for financing.

Misrepresentations on credit applications (whether the misrepresentation is made by the consumer or the dealer) are serious and covered by existing law.[59] The FTC's stated rationale for this provision is to avoid consumers taking on more debt than they can afford, or beyond which a financing company would approve.[60] Dealers would violate this provision by (1) including on a consumer's application for financing consumer income information that is different from what the consumer stated to the dealer, (2) representing a different down payment amount than the amount the consumer provided, or (3) misrepresenting that the vehicle is being sold or leased with certain Add-on products.[61]

The FTC notes that a dealer would not run afoul of this subsection if a consumer falsely states a higher income on a credit application; however, a dealer could violate this prohibition by affirmatively altering such information or by advising a consumer to list a higher income in other ways.[62] Many consumers have circumstances that make determining reportable income difficult, including gig workers and those who work on commission. Dealers are encouraged to consult with their legal counsel to determine the proper way to calculate income for auto retail installment contracts[63] and ensure that any employees who interact with consumers regarding credit applications are adequately trained to avoid advising consumers in any improper methods for calculating income.

In addition, dealers should work with their legal counsel and review their contracts with finance sources to determine whether the dealership should disclose any customer

Compliance Tip

Dealers should not only (a) ensure that employees are trained to avoid misrepresentations to consumers, and (b) review all advertisements for such misrepresentations, but they should also carefully review any online tools – whether on a dealer website or available via dealer-provided links or promotions - related to "preapproval" or "prequalification" for credit. There are different legal implications and potentially different treatment by credit bureaus of a "preapproval" versus a "prequalification."[58] The "prequalification" of a consumer is arguably at least an implied statement as to whether that consumer has been or will be preapproved or guaranteed for a product or term. Dealers should work with their legal counsel to ensure that any such tools not only meet existing legal standards under the federal Fair Credit Reporting Act and other federal laws, but also that they do not inadvertently cause a dealer to violate this prohibition (or any of the others in the Rule) by impliedly misrepresenting that a consumer is preapproved or guaranteed anything unless such preapproval or guarantee is accurate.

financing limitations to a prospective lender to avoid allegations of an express or implied misrepresentation of material information concerning a consumer's application for financing. For example, if the dealer is aware of information that is likely to affect a lender's decision to grant credit and which is not otherwise disclosed on the credit application or in the credit file (such as when a consumer orally tells the dealer that they will lose their job next week or they just financed another vehicle that is not shown on the credit report), the dealer should inform the lender of these limitations. Dealers should work with counsel to ensure that they have clearly and conspicuously disclosed accurate, relevant, material information not only to the consumer, but also to the finance source(s). While the subsection does not require any specific additional representations or disclosures, dealers may wish to consider not only making such additional disclosures but documenting them as well so they can prove that no misrepresentations – implied or express – were made.[64]

This prohibition (along with many others) requires additional upfront and ongoing training coordination with finance sources.

When the transaction is final or binding on all parties.

and

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 engage in a transaction.

Sections (H) and (I) are intended by the FTC to address conditional deliveries (also known as "spot deliveries") and instances of misrepresentations in connection with such deliveries.[65] Conditional deliveries occur when a consumer is allowed to take delivery of a vehicle via conditional agreement – that is, a contract where, for whatever reason, the financing has not yet been finalized when delivery occurs. When not prohibited by state law, these conditional agreements usually provide that the transaction is rescinded if the condition (usually related to financing) is not met within a specified period of time.

Dealers must ensure that they avoid express or implied misrepresentations about the transaction being final. While the FTC states that no specific documents or disclosures are required by this subsection,[66] practically speaking, when a conditional delivery occurs, the Dealer should ensure that the consumer is informed clearly and conspicuously orally and in writing: (a) that the transaction is not final; (b) of the condition(s) that must be met for the contract to become final, including any timing or other requirements; and (c) that the transaction will be rescinded if the conditions are not met.

In addition, before engaging in a spot delivery, the dealer should have a reasonable basis to believe (a) that they can secure financing for that consumer, (b) on the contracted terms and, (c) that the dealer will be able to obtain all pending stipulations or follow up information requested by the prospective financing source. Dealers should consider ensuring that this "reasonable basis" is not only defensible but also is documented in connection with a specific conditional delivery.

Of course, a dealer cannot guarantee that the condition(s) will be met. If a consumer, for example, is unwilling or unable to meet a required stipulation, the dealer will not be responsible for the fact that the contract is canceled as long as it was clear to the consumer that the contract was conditional and could be canceled.

If a transaction is not finalized, both parties must be returned to their pre-contract status. Typically, the consumer must return the vehicle, and the dealer must refund any down payment and return any trade-in vehicle.[67] Selling or reconditioning the trade-in vehicle before the cancellation period has ended can lead to consumer dissatisfaction and potential litigation if the contract is ultimately canceled. Similarly, paying off a lien on the trade-in too soon, or reconditioning the trade-in, may result in unrecoverable expenses for the dealer. It is advisable for dealers to store trade-in vehicles securely until the cancellation period concludes or financing is confirmed. Dealers should also monitor spot-delivered vehicles to ensure timely follow-up on stipulations and issuance of cancellation notices. Once financing and any other conditions are secured, trade-ins can be processed, and any liens paid within required timelines.

Certain consumer groups and others refer to alleged abusive practices in connection with spot deliveries as "yo-yo" financing.

Such alleged abusive practices include:

a. When a dealer spot delivers a vehicle to a consumer when the dealer either *knows* or clearly *should know* that financing cannot be obtained on the contracted terms.

b. Pressuring or requiring a consumer to enter into a new transaction if a condition is not met.

c. Keeping or threatening to keep a cash down payment when a consumer is unable to meet a condition in a spot delivery.

d. Selling or threatening to sell a trade-in vehicle to coerce the consumer into signing the new contract.

Dealers should not engage in these or similar practices. The FTC stated that it has significant concerns about these types of abusive practices and will continue to monitor the issue.[68]

Whether or when a dealer will pay off some or all of the financing or lease on a consumer's trade-in vehicle.

This provision is targeted at misrepresentations about negative equity or trade-in payoffs. In the advertising context, the FTC has brought enforcement actions against dealers for stating in advertisement phrases such as, "we'll pay off your trade no matter what you owe."[69] Consumers often misunderstand these statements as the dealer covering the trade-in payoff or forgiving the remaining balance on the finance or lease agreement. In reality, dealers typically roll the trade-in balance into the new finance or lease agreement. Therefore, the allegation is that this or similar statements are misleading to consumers who may believe that an advertised price includes the payoff of a trade "no matter what they owe," rather than simply adding that amount to a new finance or lease balance.

Any dealer representations through advertisements and direct communications or negotiations about paying off a trade-in should be clear and not misleading and include a disclosure that the outstanding trade-in balance will be incorporated into the new loan. As noted, broad phrases like "we will pay off your trade no matter how much you owe" should be avoided.[70]

Additionally, dealers should be aware of state-specific regulations regarding trade-in payoff statements and timing requirements.

Whether consumer reviews or ratings are unbiased, independent, or ordinary consumer reviews or ratings of the dealer or the dealer's products or services.

This provision generally prohibits a dealer from manipulating reviews to give a false impression of consumer experience, such as through editing reviews or showing only positive reviews. It also requires clear and conspicuous disclosure of material connections between a dealer and a reviewer (if any), such as if the reviewer was paid or offered something of value to write a review, or if the reviewer is an employee or family member of the dealer.[71] These disclosures are required across all mediums and platforms, whether the reviews, ratings, or testimonials appear in print, video, online, social media, etc.

The FTC has long initiated enforcement actions against businesses of all kinds that are alleged to manipulate or deceive consumers with reviews, testimonials, ratings, and endorsements. In August of 2024, the FTC issued a rule banning "fake reviews and testimonials" and allowing the FTC to seek civil penalties against knowing violators.[72] Further, the FTC maintains the "Guides Concerning the Use of Endorsements and Testimonials in Advertising."[73]

Dealers should become familiar with the FTC's Rule on the Use of Consumer Reviews and Testimonials and endorsement guidelines and consult with legal counsel to ensure that any review and endorsement practices align with the FTC's law and guidance and employees are trained to avoid running afoul of the requirements.

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 United States Department of Defense or its Military Departments.

Dealers, especially those near military institutions or who work closely with military or federal government personnel or have customers who belong to these organizations, should be careful how they advertise or represent their connections and involvement with such institutions or personnel. This

provision would also cover misrepresentations that give the impression that a dealer is a veteran, that a dealership is "veteran-owned," or that a dealer has pricing or programs that are government or military-affiliated or sponsored when in fact they are not.[74] The FTC cites its concerns that misrepresentations about a dealer's endorsement or connections to the military or federal institutions or personnel are likely to affect consumers' conduct.[75]

The FTC has also, in the past, brought enforcement actions against marketers for impermissibly representing or implying a relationship with a government agency based on marketing materials or statements made by marketers.[76] Dealers should take steps to avoid even the appearance of any such impersonation or affiliation with a government agency in marketing materials or otherwise.[77]

Whether consumers have won a prize or sweepstakes.

Misrepresentations concerning prizes, giveaways, and sweepstakes have been the subject of frequent FTC, state, and local enforcement actions for decades. In addition to the FTC, state and local law enforcement and regulatory agencies have targeted businesses engaging in unfair and deceptive practices concerning the operation of sweepstakes. Misleading practices concerning sweepstakes can also result in claims of fraud and breach of contract being made against a dealer by a consumer.

Marketing claims about contests can be deceptive.[78] For example, dealers should not state that a consumer will receive a prize unless the consumer actually will receive the prize. Dealers should avoid misleading language and should add appropriate disclosures and clarifying information when appropriate. For example, if receipt of the prize does not occur at the time of the visit to the dealership, that should be stated, or if there is a limited number of prizes available, the amount available should be stated.

When developing and advertising a contest, sweepstakes, or game of chance, dealers should work with legal counsel and recognize that many of the applicable legal requirements arise under state law. General guidelines to keep in mind when advertising a sweepstakes or contest include establishing clear terms and conditions that specify the rules, eligibility criteria, prize details, and selection processes, which enhances transparency and minimizes legal risks.

Additionally, it is important to accurately represent prizes, ensure they are available as described, and avoid misleading phrases or images that could falsely suggest winning odds or prize entitlement. It is also important to disclose any prize restrictions or conditions clearly and maintain thorough records of sweepstakes operations (including the recordkeeping requirements of the Rule, which mandates retention of unique advertisements and rules for 24 months).

Whether, or under what circumstances, a vehicle may be moved, including across State lines or out of the country.

This provision prohibits misrepresentations about moving vehicles across state lines or out of the country. A violation may occur if the vehicle is prohibited (generally by the OEM or a finance source) from being moved across state lines, or from being moved out of the country.[79] Of course, dealers should avoid affirmative misrepresentations about whether there are such restrictions. However, given that this issue is unlikely to arise in the vast majority of transactions, as a practical matter, to ensure that there is a record that a misrepresentation was not made, dealers may want to consider making affirmative disclosures both orally and in writing if a particular vehicle is subject to any such restrictions.

A consumer is likely to believe that they can move a vehicle wherever they want after the transaction is final; if that is not the case, the dealer will have the best protection against a claim of implied misrepresentation if they can show that an informed disclosure was made to the consumer about any such restrictions. The FTC notes that this issue is of particular importance to military personnel "who may frequently need to move" across state lines or out of the country.[80]

Dealers may find it beneficial to employ a form to document any restrictions on a customer's ability to move a vehicle out of the state or out of the country. Although not specifically mandated by the Rule, using a form to memorialize these disclosures can assist dealerships in demonstrating that they effectively communicated this information at the time of purchase or lease. A sample template for making this type of disclosure is included in Appendix G.

Whether, or under what circumstances, a vehicle may be repossessed.

While this provision seems straightforward and duplicative of existing laws, dealers are advised to consult with legal counsel in connection with repossession practices to ensure that they follow the various state and federal laws that govern repossessions. In particular, the FTC expresses concerns about the use of "vehicle disablement technology" – starter interrupt and similar devices. If dealers use such devices, they should consult with legal counsel regarding limitations, adequate disclosure, and other implications under the Rule and other federal and state laws.

This provision does not limit a dealer's right to legitimately exercise any lawful repossession rights, but dealers must avoid any misrepresentation either during or after the sale or lease transaction with respect to those rights (as well as ensuring compliance with related federal or state laws such as the Servicemembers Civil Relief Act).

In its analysis of the Rule, the FTC states its concern about repossession practices, and notes that it will continue to monitor the issue to see "whether additional restrictions are warranted."[81]

Compliance Tip

In situations where a finance source notifies the dealer of a problem with a transaction and threatens to exercise its right to have the dealer buy back the contract, dealers must be cautious about how they communicate with the customer. If the dealer is no longer the owner of the vehicle due to its sale and the assignment of the contract to the finance source, the dealer should not threaten to repossess the vehicle to resolve the issue. Doing so could constitute a misrepresentation of the dealer's rights and could violate the Rule's prohibition on deceptive practices regarding repossession circumstances.

Any of the required disclosures identified in the Rule.

As discussed below, the Rule requires a number of additional new disclosures to be made to consumers – both in advertisements and in-person communications. This provision clarifies that not only would a failure to provide the required disclosures constitute a violation of the Rule, any misrepresentation that circumvents, limits, or contradicts those required disclosures would also constitute an independent violation of the Rule.

This is one reason why, even though the Rule states that certain disclosures may be made orally in certain circumstances, dealers should work with legal counsel to determine whether to create and retain a written record of such disclosures. Without such written, contemporaneous records, it will be difficult to prove that such disclosures were made.

VI. DEALER ADD-ON CONSIDERATIONS

The VSR defines Add-ons[82] (or "Add-on Product(s) or Service(s)") 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."[83]

This means that Add-ons under the Rule, and all the requirements and prohibitions regarding Add-ons in the Rule, apply to anything – physical or otherwise – that was not provided by or installed on the vehicle by the OEM. That includes:

a. Physical items such as window tint, paint protection, etching, theft deterrent products, tow hitches, moonroofs, and roof racks.

b. F&I products such as service contracts, GAP agreements, and insurance products.

c. Software (including software upgrades) and wi-fi or other "connected car" features or products.

d. Anything else for which a dealer charges a consumer in connection with a vehicle sale or lease, provided the above items were not installed or provided by the manufacturer.

Products that the manufacturer requires the dealer to install, and for which the dealer charges the consumer, are also considered Add-ons.[84] Further, in regards to used vehicle Add-ons the FTC states, "…if a prior owner of such a vehicle installed an add-on, and the dealer that subsequently sells such a vehicle requires any consumer to pay charges for the add-on, the amount of those charges must be included in the

vehicle's offering price and the dealer must comply with other aspects of the Final Rule, including the express, informed consent requirement…"

This Section addresses the Rule's approach to mandatory versus optional Add-ons, including those that offer no consumer benefit. The Rule requires specific disclosures for Add-ons. Those are discussed in detail in Section 7, Disclosures.

a. Mandatory vs. Optional Add-ons.

The FTC states that Add-ons can be either mandatory or optional.[85] Keep in mind that state law may set forth products that must be optional in the vehicle sale and leasing context, and the Truth in Lending Act and its implementing regulation (Regulation Z) specify disclosure requirements that must be satisfied if the purchase of these products is mandatory.[86]

For purposes of the VSR, the distinction between "mandatory" and "optional" Add-ons is important primarily because it determines whether their cost must be included in the vehicle's Offering Price. A mandatory Add-on is one that the dealer requires to be purchased with the vehicle, the cost of which must be included in the Offering Price. Examples can include accessories on customized vehicles, pre-installed window tint, or pre-installed catalytic converter etching. A used vehicle with Add-ons installed by a prior owner that the dealer takes into account when setting the price likely constitutes a charge for the Add-on, rendering it mandatory (see discussion below).[87]

On the other hand, optional Add-ons are those products or services that the customer can choose to purchase or not, and which are not required to be in the Offering Price. 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. (See Section 7). In addition, both types of Add-ons are subject to the Rule's disclosure requirements, including the need to obtain the customer's express, informed consent. (For further discussion on express informed consent, refer to Section 7 of this Guide.)

Determining whether an Add-on is mandatory or optional is ultimately in the dealer's control, based on a business decision that the dealer makes. The dealer, however, should use reasonable discretion when deciding whether to make any product or service mandatory (subject to state law considerations). If the Add-on is mandatory, it must be included in the Offering Price. Dealers might also consider factors like:

1. **Service vs. Tangible Good**: Services contracts are more likely to be optional,[88] 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 deterrents or protection devices that it removes at their request without objection.
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 or lift kits might be good examples. The FTC also recognizes dealer-customized vehicles with pre-installed accessories in this category. [89]
4. **State Law**: Some states, like California, legally categorize certain products as "optional." This often includes theft deterrent devices, surface protection products, maintenance and service contracts, insurance products, and GAP agreements.

Importantly, if the dealer intends to charge for mandatory Add-ons, the dealer must include them as part of the Offering Price and must get the consumer's express, informed consent to the purchase of the Add-ons.[90] Stated another way, a dealer cannot increase the Offering Price of a vehicle to account for mandatory Add-ons without obtaining from the customer express, informed consent. Without express, informed consent, the transaction cannot proceed.

A Note About Catalytic Converters

Certain products and services, such as catalytic converter etching, could be considered optional or mandatory depending on the dealer's practices. 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 dealer to pre-etch the VIN

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and treat the etching as a mandatory product, or provide it as an optional product that is etched after the sale, allowing 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 this cost must be treated like other mandatory Add-ons and be included in the Offering Price. 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, and the cost of the service is not required to be included in the Offering Price.

The dealer would need to comply with the other disclosure requirements for optional Add-ons discussed in Section 7, and both optional and mandatory Add-ons require express, informed consent.

The Rule's definition of an Add-on presumes that the consumer is being charged for it. Given this definition, if a product or service is included with the vehicle but not charged for, it would not technically be considered an Add-on under the Rule. However, the FTC has expressed significant concerns about the practices surrounding Add-ons in general. Therefore, even if a product or service does not meet the precise definition of an Add-on under the Rule because it is not being charged for, it is still recommended as a best practice to disclose its presence and secure express, informed consent from the consumer. This approach is particularly important for items that could implicate consumer privacy or legal rights, such as a tracking device installed solely for lawful repossession purposes.[91] In these situations, dealers should assess the need for disclosures and obtain customer consent under other relevant laws, even if it does not fall within the scope of this specific Rule.

Dealers must exercise diligence when requiring Add-ons that are not installed on the vehicle, as this practice may restrict negotiation flexibility and in certain circumstances could be alleged to be a misrepresentation regarding Add-on products under the Rule (e.g., if a salesperson provides a false reason for why the Add-on is mandatory).

Compliance Tip

Dealers and their vendors should review and update all desking sheets, payment quotes, F&I menus, and other forms related to Add-ons to ensure they do not contain any misrepresentations regarding the optional or mandatory nature of the Add-ons. These forms should clearly distinguish between mandatory and optional Add-ons. If necessary, the forms may need to be reprogrammed to automatically incorporate the cost of mandatory Add-ons into the Offering Price. Dealers may consider reaching out to their DMS provider for assistance.

	Mandatory Add-ons	Optional Add-ons
Definition	Products or services the dealer requires to be purchased with the vehicle	Products or services the customer can choose to purchase or not
Examples	Window tint, vehicle lift kit, pre-installed catalytic converter etching, roof rack and other physically installed products that the dealer will not remove	Service contracts, GAP agreements, theft deterrent device that the dealer will remove, roof rack that is not pre-installed
Offering Price Inclusion	Cost must be included in the Offering Price	Cost not required to be in the Offering Price
Disclosures Required	Dealership must obtain the customer's express, informed consent	1. 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 2. Dealership must obtain the customer's express, informed consent

b. Add-ons with No Benefit.

The Rule forbids a dealer from charging for an Add-on unless it benefits the consumer.[92] This applies to both mandatory and optional Add-ons. Determining such benefits is a complicated and multi-step process.

In § 463.5(a), the Rule states:

> *Add-ons that provide no benefit.*
>
> *A dealer may not charge for an Add-on Product or Service if the consumer would not benefit from such an Add-on Product or Service, including:*
>
> *(1) Nitrogen-filled tire-related products or services that contain no more nitrogen than naturally exists in the air or*
>
> *(2) Products or services that do not provide coverage for the vehicle, the consumer, or the transaction or that are duplicative of warranty coverage for the vehicle, including a GAP Agreement if the consumer's vehicle or neighborhood is excluded from coverage or the loan-to-value ratio would result in the consumer not benefiting financially from the product or service.*

The FTC states that the "value" determination includes "analyzing objective standards under the circumstances" of the specific transaction. These "circumstances" include whether the Add-on provides benefits; whether the consumer is eligible to use it; whether the coverage excludes the vehicle at issue; and whether the Add-on is incompatible with the vehicle at issue.[93]

To help ensure Add-ons sold by the dealership provide benefits to customers, dealers must:

1. review and analyze any Add-on product or service offered by the dealership objectively to determine whether it provides or could provide any benefit to a consumer; and
2. analyze the product or service in the context of a specific consumer and transaction to determine if it provides value in that specific circumstance.

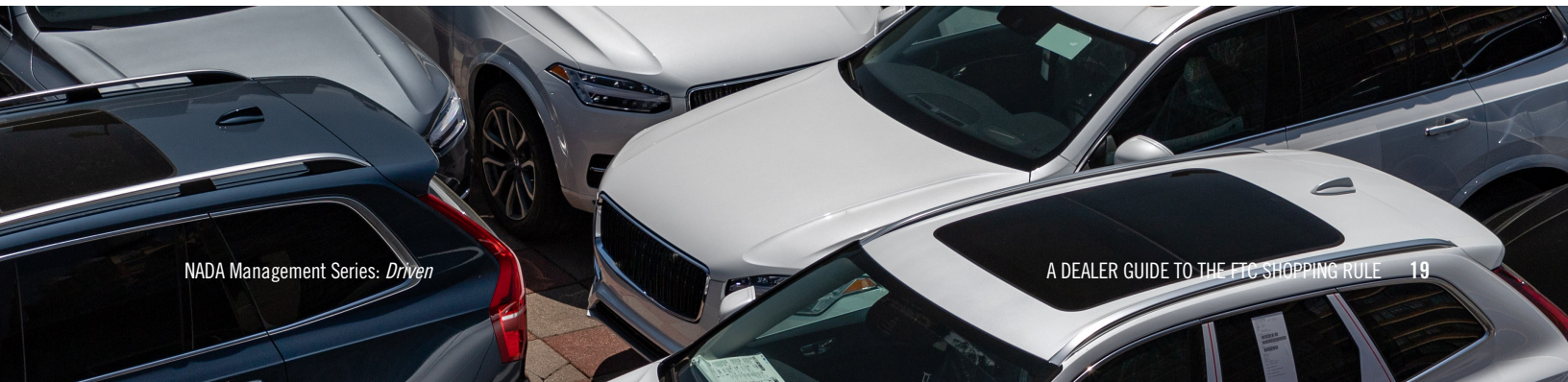
To meet the first test, dealers should conduct a review of all Add-on products they offer (or require) to ensure that they provide some potential consumer benefit that a dealer can articulate and document. Dealers should seek fulsome documentation and substantiation for claims regarding the potential value of products from third-party product providers and should make that part of their due diligence in selecting product providers.

The key for dealers is to establish and document tangible value or potential value for all products, and to avoid making any misrepresentations to consumers about the nature of that value. When in doubt about the sufficiency of substantiation offered by the vendor, dealers should consult with legal counsel experienced in the law of advertising claims.

A Note About Nitrogen-Filled Tires

The FTC identifies at least one product as an example of a product that fails the first "objective" analysis – nitrogen-filled tires that contain no more nitrogen than in the ambient air. In the FTC's view, that is an example of a product that cannot objectively provide value to anyone, and thus would violate the prohibition on charging a consumer for a product that provides no value.[94]

Dealers should exercise additional caution with products (including treating such products as "optional" as opposed to "mandatory" and ensuring fulsome documentation of ingredients, methodologies, benefits, etc.). Dealers should ensure they have credible evidence from their providers of the extent to which nitrogen-filled tires contain more nitrogen than the ambient air and the benefits this can provide to consumers.



The second step in this analysis is to show that a particular "Add-on" provides or could provide value to a specific customer and transaction. This is a much more challenging task and will require extensive and ongoing training and documentation in the sales process. The FTC provides several examples of "valueless" Add-ons, some of which are inherently "valueless" – that is, they could not provide value to any consumer, and some of which are valueless based on the circumstances in which they are sold.

FTC examples of valueless Add-ons include:

- Rust-proofing products that do not prevent rust.
- Theft deterrent devices that do not prevent or deter theft.
- Add-ons that the vehicle cannot support such as
    a. An engine oil change package for an electric vehicle that does not use engine oil.
    b. Software or audio subscriptions for a vehicle that cannot support the software or subscription.[95]

The first two fail the first test outlined above – they cannot provide consumer value in any context. The third fails the second part of the test – those products do not provide value in that specific transaction.

Meeting the second "circumstances" test means that dealers will need to evaluate all Add-ons offered in the context of: (a) the vehicle they are selling; (b) the person to whom they are selling the vehicle, and (c) the uses or needs of that person in that vehicle.

This analysis may be straightforward in some cases, but in many others it will not be. Taking one simplistic example - selling snow tires to a consumer in Florida may seem like it would provide no "value" to that consumer. However, if that purchaser were a part-time resident of Buffalo, NY who uses the vehicle in New York, the analysis may be different.

Regarding service contracts and other voluntary protection products, the FTC notes that some overlap with existing warranty coverage is permissible, provided the Add-on offers additional protection beyond what is already covered.[96]

The bottom line is that dealers should apply common sense when offering Add-ons but should also ensure: (a) fulsome evidence and documentation of benefits; (b) clear and conspicuous disclosures to consumers, and (c) documentation of consumer choices.

A Note About EV Maintenance Agreements/Service Contracts

Dealers should exercise particular caution with respect to maintenance agreements or service contracts that could cover electric vehicles. Some of these agreements are far broader in their definition of service internals and covered parts (often in an effort to be overly broad or cover multiple vehicles) that are NOT applicable to electric vehicles. Additionally, EV protection products are in their infancy, meaning they are not well tested in the marketplace, which could raise unforeseen concerns.

GAP Products – Required LTV Ratio Calculation

The FTC expressly includes the sale of a GAP agreement where the consumer's vehicle or neighborhood is excluded from coverage, or the loan-to-value (LTV) ratio would result in the consumer not benefiting financially from the coverage, as a specific example of a "valueless" product.[97]

To ensure that dealers are not running afoul of this prohibition, dealers will need to conduct an LTV ratio calculation each time GAP is offered. Once this ratio is calculated, the dealer will then need to make a value determination as to that specific consumer.[98] As part of this consideration, dealership employees selling these products should be well-versed in the benefits, exclusions, and limitations of the products they are selling.[99] For example, many GAP waivers exclude coverage of commercial vehicles, losses occurring outside the US or Canada, and losses arising out of competitive driving or racing. If a customer plans to use their vehicle in any such manner, they will not benefit from the GAP waiver.

Dealers should also be aware of applicable state laws regarding the sale of GAP products.[100] As a reminder, the Rule does not disturb state law unless it is inconsistent with the Rule, and then only to the extent of the inconsistency. The FTC has stated that in situations where the state restricts the sale of GAP below a specific threshold, dealers are able to follow both state law and the VSR.[101] This does not necessarily mean that either 70% or 80% are an appropriate or required level for this ratio, but it does provide some

indication of what several state legislatures have found to be a level below which consumer value would not be provided by GAP.

VII. DISCLOSURE REQUIREMENTS

The next main requirement under the Rule is a series of key disclosures to consumers. These disclosures include the Offering Price, a statement indicating that the purchase of Add-ons is not mandatory (when applicable), the total amount of payments and consideration for financed or leased transactions, and specific disclosures when presenting a comparison between two or more monthly payment options.

The FTC requires that disclosures and qualifications under the Rule be made "Clearly and Conspicuously."[102] This means they should be noticeable and understandable, presenting information in a way that is difficult to miss and easy to comprehend, including in a language the consumer understands.[103] Disclosures should be made in the same format as the communication (e.g., both visual and audible where applicable). Visual disclosures must be large enough to be seen clearly, and audible disclosures should be loud and clear enough to be heard and understood. For communications using interactive mediums like the internet, disclosures must be "unavoidable," implying that methods such as click-throughs or hover-overs may not suffice because a consumer could not notice this type of disclosure by not clicking the link, or not hovering over to view the disclosure.

The FTC has previously questioned click-through disclosures, including in its 2013 publication ".com Disclosures: How to Make Effective Disclosures in Digital Advertising."[104] The FTC uses an objective "reasonable consumer" standard to determine compliance and notes that disclosures are viewed in the context of the overall net impression of an advertisement or communication.

Overall, the concept of “clear and conspicuous” disclosures of material information in advertisements is not new. However, the Rule goes beyond its previous guidance to provide more detailed information about this standard. Dealers should review this information and work with their advertising and website providers to ensure that all material disclosures meet these standards.

a. Offering Price

The concept of “Offering Price” is critical to understand how to comply with the Rule. It requires dealers to take steps to ensure not only that advertisements (in all formats and forms) include a specific price, but also that consumer communications include certain disclosures.

In connection with the sale or financing of vehicles, the Rule requires dealers to disclose the “Offering Price” clearly and conspicuously in two situations:

1. In any **advertisement** that expressly or implicitly references:
    a. A specific vehicle, or
    b. Any monetary amount or financing term for *any* vehicle.
2. In any **communication with a consumer** that includes a reference, expressly or by implication, to:
    a. A specific vehicle, or
    b. A monetary amount or financing term for *any* vehicle.

In the communication with the customer, the Offering Price must be disclosed in the dealer’s “first response” to the customer, and if the communication is in writing, the Offering Price must be disclosed in writing.[105]

> **NOTE:** The Offering Price advertising requirement only applies to sale or financing advertisements, not to leases.

“Offering Price” is defined as the full cash price at which a dealer will sell or finance a vehicle to any consumer - excluding required Government Charges (defined below). This means that amounts for charges such as document processing fees and pre-installed or mandatory Add-ons must be included in the Offering Price if the dealer requires such charges from “any consumer.”[106]

Dealers should list the Offering Price as the most prominently displayed price in an advertisement. Dealers are not permitted to include deductions for rebates or down payments in the Offering Price.[107] A dealer is permitted to provide additional truthful information in conjunction with an Offering Price so long as the required Offering Price disclosure remains clearly and conspicuously presented to consumers.[108] Discounts or rebates that are not available to everyone can still be advertised or mentioned, but they must be stated separately from a prominently displayed Offering Price, and their material conditions and restrictions must be clearly and conspicuously disclosed.[109] It is still plausible that a dealer can also show a net cost after the application of conditional rebates provided that there is a clear and conspicuous disclosure of the Offering Price and rebate conditions and that the overall net pricing impression is not misleading. A potential alternative approach would be to state the Offering Price and advertise any conditional rebates or discounts separately, with their material conditions and restrictions stated clearly and conspicuously.

There are a few additional important concepts to understand about the Offering Price. First, a dealer is permitted to note that the Offering Price is negotiable as long as the Offering Price disclosure remains clear and conspicuous.[110]

Second, the Offering Price is a ceiling, not a floor. In other words, dealers can always discount a final negotiated price with a consumer. However, they can never charge more than the Offering Price for a vehicle. For example, a consumer could see an Offering Price of $57,500 and come in and offer $57,000 for that vehicle. The dealer would be permitted to sell that vehicle for $57,000 to the customer. However, the dealer would be prohibited from charging any consumer more than the listed Offering Price of $57,500 for that vehicle. To be clear, the final transaction price could be higher than $57,500 because of charges for items that are not required to be in the Offering Price such as optional F&I products, government charges, and financing costs. That is permitted as long as the charge for *the vehicle itself* is no more than the $57,500 Offering Price.

Third, an Offering Price can change. Dynamic pricing of vehicles is permitted, but several things are important to remember: (1) If the dealer knows that the Offering Price will only be available for a limited time, that must be clearly disclosed in the advertisement. That does not mean dealers are required to put a specific date or time. However, dealers must disclose a limited time Offering Price clearly and conspicuously.[111] (2) If the price changes, the new Offering Price must be accurately reflected in all advertisements and in all first responses (see discussion below). This creates some practical difficulties for dealers - especially for dealers who advertise the same vehicle on multiple websites or other platforms. Dealers should work with their advertising and website vendors to ensure that any price changes are quickly and accurately reflected across all advertisements.

Fourth, a Government Charge is defined as "all fees or charges imposed by a federal, state, or local government agency, unit, or department, including taxes, license and registration costs, inspection or certification costs, and any other such fees or charges." If a charge is a "Government Charge" it may,[112] but is not required to, be excluded from the Offering Price.[113]

The key to understanding what may be excluded is to understand who is "imposing" the charge. If the government is imposing the charge to the consumer, then it may generally be excluded. If the dealer is imposing the charge, then it must be included in the Offering Price. For example, document processing fees or other similar fees must be included, even if the state requires their disclosure, sets a limit or amount, or otherwise regulates that fee. If it is not *imposed* by the government, then it must be included in the Offering Price.

"First Response" Rule

Dealers must also disclose the Offering Price in the first communication about a specific vehicle. Thus, if a customer asks if a specific vehicle is in stock, a dealer must respond with that vehicle's Offering Price if the vehicle is in stock. This disclosure is required no matter the context of the consumer inquiry. Even if a consumer first asks about colors, features, or gas mileage, the first response must include the Offering Price. It is unclear how this requirement applies to an inquiry about a lease (given that the requirement does not apply to leases), but best practice would be to ensure that ALL first responses include the Offering Price.

Of course, in many cases, the Offering Price disclosure does not address the customer's initial request. There is no prohibition on explaining why this (sometimes odd) response and disclosure is given (e.g., "I know you asked about gas mileage, but federal regulations require I first tell you the Offering Price to buy that vehicle is $57,500."). Dealers should discuss with legal counsel establishing a standardized

written first response to ALL consumer inquiries to meet this requirement (see discussion below).

A Note About Making Disclosures in Writing

Many of the disclosures required under the Rule are permitted to be provided orally. However, it is advisable to ensure that all disclosures required by the Rule are in writing and include a customer signature. Without a written record, dealers will have no effective way to defend themselves against alleged violations of the disclosure requirements. Moreover, given that the recordkeeping requirements of the Rule (discussed below) require dealers to "create" and maintain records to demonstrate compliance with the Rule, creating a written record of these disclosures is arguably required to satisfy this standard.

A series of sample disclosure documents are set forth in the Appendix of this Guide. ***These are examples and have not been proposed or accepted by the FTC as adequate***. Given the number of disclosures and the potential for consumer confusion, dealers should consult with legal counsel to determine whether their dealership should require additional disclosures and customer signatures.

Lastly, the Rule does not require hard copies of disclosure documents. Dealers may choose to make such disclosures electronically but should consult with legal counsel concerning compliance with the federal E-SIGN Act.

Additionally, if the dealer chooses to mention another vehicle in the response, the dealer must include the Offering Price for that other vehicle as well.[114] However, if the customer asked a general question about availability, such as whether the dealer has any silver Ford F-150 vehicles in stock, and the dealer responded that they have five in stock, that would not require that an Offering Price be disclosed for all five of those vehicles. If a dealer responds by referencing a specific silver Ford 150 in stock, an Offering Price must be included because a specific vehicle was referenced.[115]

Importantly, if a customer has an ongoing conversation with a dealership employee, *each first response about any specific vehicle* must include the Offering Price for that vehicle. As a result, it is likely that most consumer interactions (in whatever setting) will require one or more Offering Price disclosures.

Remember that this disclosure requirement applies **no matter how the communication takes place**. Whether it is in person, via email or text, over the phone, via chatbot, or by fax, the first response must include the Offering Price.

Dealers should consider the practical implications of this requirement, particularly in the context of online communication tools such as website chat modules. Dealers should understand how the chat module interacts with the customer and whether it has access or the ability to reference inventory pricing information when responding to users. Some chat modules are robots or based on AI with limited functionality in terms of departing from certain scripts. In cases were the chat module is not operated by a live person, such as modules that are computer-controlled after business hours, the dealer might look into whether the module is capable of disclosing that it is an automatic software and does not have access to the information, and then forward the request to a person at the dealership that can respond to the customer with an Offering Price.

The first response requirement also applies to CRM communications, text messages, and social media messages.

The Offering Price disclosure is a particularly difficult issue to address when dealer employees are interacting with consumers via personal devices or via social media. Dealers will need to control those communication processes to ensure that they are observing the Offering Price requirements when responding to messages. Compliance may require that responses are delayed if an employee is not able to access the Offering Price at the time that the message is received.

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Many customer interactions are dependent on the specific facts of the encounter and dealers should consult with legal counsel on the best way to address these scenarios.

Communications that a dealer's service department has about specific vehicles for sale can also trigger the Offering Price disclosure requirement. For example, if an employee in the service department was discussing trade-in and upgrade options with a consumer and a specific vehicle for sale was referenced, the Offering Price would need to be disclosed.

Multiple Vehicles & Finance Specials

As noted above, the dealer is required to disclose the Offering Price when a monetary amount or financing term is expressly or implicitly referenced in an advertisement, or in a communication about a specific vehicle or group of vehicles.[116] So if a down payment amount, monthly payment amount, or financing term length was referred to in a communication about a specific vehicle or group of vehicles, the Offering Price, or at minimum a range of Offering Prices, would need to be disclosed.[117]

The Rule effectively requires, among other things, that dealers include an Offering Price on advertisements for all finance specials. Typically, finance specials are advertised without specifying an Offering Price, as these promotions often apply to a wide range of vehicles with varying MSRPs and Offering Prices. However, under the Rule, dealers need to include the Offering Price in these advertisements. This change will present challenges for dealers, as they will need to determine how to effectively communicate the Offering Price for finance specials that encompass multiple vehicles with different prices.

For example, if a 0.9% APR for 60 months offer was advertised for multiple vehicles or an entire model/trim level (as is customary for finance specials), that would trigger the Offering Price disclosure requirement (in addition to the TILA and Regulation Z disclosure requirements). Dealers may need to limit advertisements and discussions to a specific vehicle or to vehicles with the same price (as is customary on lease specials) to avoid numerous Offering Price disclosures in connection with a single advertisement (i.e., itemizing every vehicle applicable to the finance special with its Offering Price). Unfortunately, the FTC does not discuss this extensively in its commentary despite the significant impacts the disclosure requirements pertaining to a group of vehicles will have on dealer advertisements and communications.[118]

Also note that the Offering Price disclosure is closely linked to the Total of Payments disclosure, which will be discussed later in this section, and poses even more practical considerations and challenges for advertising finance specials using these alternative strategies.

b. Add-ons

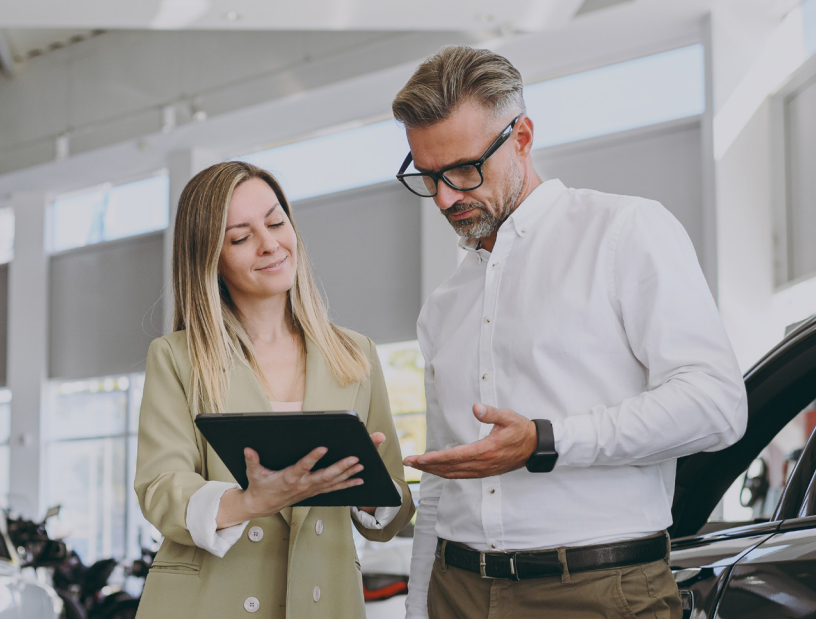
When a dealer makes any representation about an optional Add-on, the dealer must disclose that the Add-on is not required and that the consumer can purchase the vehicle without the Add-on, if true.[119] This is an required disclosure and must be given clearly and conspicuously. Dealers should consider adding written disclosures to menus in the F&I department and will need to train their personnel that during discussions of optional products and services, employees must disclose orally that the optional Add-ons are not required. Additionally, dealers must obtain express, informed consent orally for in person transactions and in writing for all charges.

c. Monthly Payment-Related Disclosures

i. Total Payments Over Loan or Lease Term

If a dealer makes any oral or written representation about a monthly payment for a vehicle in either a finance or lease transaction, the Rule requires that the dealer disclose the total amount that the consumer will pay to purchase or lease the vehicle at that monthly payment after making all monthly payments as scheduled.[120] If the representation is in writing, the disclosure must be in writing. The implication here is that if the representation is oral, the disclosure can be oral, but see discussion above about being able to demonstrate that an oral disclosure was made.

This disclosure impacts both deal negotiations and advertisements. When working with customers directly during the deal negotiation process, the dealer must be prepared to provide the disclosures required by this section through various methods and at multiple stages (e.g., F&I menus, desking sheets, payment quotes, four squares, online payment calculators, and communications with customers



regarding monthly payments, including chat modules). Dealers must work closely with their technology vendors to ensure that adequate disclosures are made.

Importantly, dealers must be careful when making assumptions about monthly payment representations. For example, if the monthly payment assumes that the consumer will provide consideration such as a down payment or trade-in, the disclosure must also state that amount.[121] Dealers will need to change many of their advertisements, particularly finance advertisements, as under the current practice these amounts generally are omitted in finance specials. Under the Rule, however, the dealer will need to clearly and conspicuously state the amount of the customer-provided consideration that is assumed for the calculation.

In addition, to the extent that a dealer makes assumptions about credit, the dealer would need to disclose that to the consumer as well. The FTC states that the dealer would need to avoid making assumptions that a consumer would not reasonably expect, or about terms that a consumer might not reasonably qualify for.[122] The FTC states in a footnote, however, that deception is less likely when a dealer discloses the assumptions that they relied upon in a clear and conspicuous manner. For example, if a dealer assumed that a customer had excellent credit to qualify for a 0% APR offer, the dealer should state clearly and conspicuously that the offer requires the consumer to have excellent credit (e.g., FICO score of 750 or above) and meet other lending criteria (and disclose those criteria if they are material).

As a reminder, whenever this disclosure is necessary for a purchase or finance transaction, the Offering Price must also be disclosed. This disclosure is required because the

Compliance Tip

The requirement to disclose the total amount that the customer will pay to purchase or lease the vehicle, along with any assumed consideration that the customer will pay, will necessitate that dealers make new disclosures pertaining to finance and lease transactions. In addition, for finance and purchase transactions, the dealer will need to state the Offering Price. A draft disclosure is set forth below for lease and finance/purchase transactions. ***These disclosures have not been approved by the FTC***. Dealers should ensure that legal counsel reviews any disclosure to ensure compliance in any particular instance.

Leases:

The total amount you will pay to lease the vehicle at this monthly payment, after making all payments as scheduled, is: $_____ (plus tax).

This monthly payment and total payment assume an initial payment at contract signing (e.g., whether in the form of a trade-in or down payment) in the amount of: $_____.

Purchase/Finance:

The Offering Price for this vehicle is: $_____.

The total amount you will pay to purchase the vehicle at this monthly payment, after making all payments as scheduled, is: $_____ (plus tax).

This monthly payment and total payment assume an initial payment at contract signing (e.g., whether in the form of a trade-in or down payment) in the amount of: $_____.

advertisement or communication will refer to a specific vehicle and/or a monetary amount or financing term.[123] The Offering Price would not need to be disclosed for a lease, however. In addition, both Regulation Z for credit sales and Regulation M for leases provide that the use of any trigger term in an advertisement requires the disclosure of certain additional terms.[124]

As noted above, for lease and finance advertisements, this disclosure will also supplement Regulation M and Regulation Z disclosures, and any additional state law disclosures.[125] This disclosure will particularly affect an often-used dealer (and OEM) advertising practice of displaying a monthly payment in finance advertisements. This formula generally displays the repayment information required by Regulation Z as "XX.XX per month per $1,000 financed." However, using a formulaic approach like this does not enable the disclosure of the total amount required under the Rule, as it is not derived from a specific monthly payment figure. Thus, under the Rule, dealers need to list a specific payment and total payment amount. Dealers should work with legal counsel to determine the best approach for this type of advertisement. One possible approach is to base advertisements on a specific vehicle or similar vehicles, which is similar to the approach currently taken in advertising leasing specials, where promotions are usually based on a group of vehicles available at a uniform MSRP. There is no guarantee that this approach will be deemed adequate, however, and the FTC provides no guidance on this issue.

A Note About Including Taxes

The FTC does not explicitly exclude taxes to be charged in finance and lease transactions (which will depend on the customer's place of residence) from the total payment disclosure requirement. While other government charges can be quantified and included in a monthly payment calculation, the monthly payment must either assume a specific tax rate or state that it is "plus tax." Dealers should work with their legal counsel to determine the best approach to this issue. In the case of assuming a tax rate, the dealer should clearly and conspicuously state the tax rate is included and the locality on which it is based.[126]

ii. Monthly Payment Comparison Disclosure

The Rule requires dealers when making comparisons between payment options that include discussion of a lower monthly payment to disclose that the lower monthly payment will increase the total amount the consumer will pay to purchase or lease the vehicle, if true. This disclosure requirement supplements the total payment disclosure requirement noted above and is another area where dealers will need to train sales staff to make the disclosure orally and in writing when this arises.

The FTC notes that this is a minimum disclosure requirement and that, to avoid deception, dealers in certain instances might need to make additional disclosures about the specific basis for any increase in total costs, or the amount of the increase in total costs.[127] The FTC's position is that absent the information required by this disclosure, a consumer might reasonably expect when presented with a monthly comparison that the lower monthly payment would correspond to a lower total transaction cost. Thus, if the comparison is relying on different elements between the compared payments (e.g., finance term length, existence of balloon payment, etc.), that information should be disclosed as well.[128]

The required disclosure should appear on documents where monthly payments are compared or might be compared. This includes on desking sheets, payment quotes, four squares, payment calculators, vehicle comparison tools that include payment information, chat modules, and other customer communications. A sample written disclosure template is found at Appendix D.

d. Express, Informed Consent for Add-ons and Other Charges

The Rule states that a dealer may not charge a consumer for any "item" without the consumer's express, informed consent (EIC).[129] EIC is defined as:

> *"an affirmative act communicating unambiguous assent to be charged, made after receiving and in close proximity to a Clear and Conspicuous disclosure in writing, and also orally for in-person transactions, 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 to be charged to the consumer over the period of repayment with and without the product or service."*[130]

This is a broad and ambiguous requirement, and the FTC has not provided guidance on how to satisfy it except to note that the following do **NOT** constitute EIC:

i. A signed or initialed document, by itself;

ii. Prechecked boxes; or

iii. An agreement obtained through any practice designed or manipulated with the substantial effect of subverting or impairing user autonomy, decision-making, or choice.[131]

The FTC also does not define the term "item" and it appears to apply to *anything* for which a dealer charges a consumer in connection with the sale or financing of vehicles. An "item" could include not only "Add-ons" but also the vehicle itself, any government charges, and any finance charges related to the vehicle.

The FTC states that the amount the dealer will charge the consumer "over the period of repayment" with the product or service is the total charge for that product or service. In the event the charge is for an optional product or service, the amount the dealer will charge the consumer *without* the product or service is zero.[132] In the case of charges for non-optional items, the dealer's disclosure must clearly indicate as such. For cash purchases, the amount charged over the term is the total amount charged for that item upon receipt of the vehicle.[133]

While this requirement necessitates a separate signed document, a signed document alone is not sufficient. If a transaction occurs in person, EIC must also be given orally. The FTC notes a best practice for obtaining EIC includes presenting information and finalizing actual terms early in the transaction and maintaining records that this was done. The FTC notes that, as a transaction progresses, "consumers expect to be finalizing previously agreed-upon terms instead of discussing new charges and new products or services."[134]

NADA Management Series: *Driven*

EIC and Foreign Languages

A dealer does not obtain EIC if the consumer's agreement to a charge is ambiguous or based on a disclosure the consumer does not easily understand. EIC requires translation if a dealer uses one language during negotiations and a separate language in its contracts and the consumer does not understand and assent to the charges.[135] This expands existing translation requirements required by some states as the translation will not be restricted to any specific language or specific transaction document. For example, if a dealer negotiates a transaction in Spanish, they will need to provide all contract documents in Spanish.

Dealers should consider obtaining a written acknowledgment from customers regarding the language used during a transaction, specifying whether a non-English language was used or if the transaction was conducted solely in English. To minimize claims of deception, this acknowledgment should include translations in commonly used languages. Some states, such as California, already have similar requirements.

See Appendix F for a sample EIC form for contract items. This form may require modification to accommodate specific state disclosure requirements that supplement the Rule. The purpose of this form is to consolidate all items that will be charged to the customer, along with the corresponding charges for each item, and to have the customer initial every item. Furthermore, it is recommended that dealers review the form with the customer line-by-line to ensure that the customer fully understands and agrees to the charges. ***This form has not been approved by the FTC***. Dealers should ensure that legal counsel reviews any disclosure or form to ensure compliance in any particular instance.

A Note About the Holder Rule

The FTC also states that the Rule does not exempt the transactions it regulates from the Holder Rule, which allows consumers to assert the same claims and defenses against a subsequent holder of their contract that they could assert against the dealer.[136] It is therefore possible that finance companies will seek by contract to assert additional audit rights, impose new compliance obligations, require indemnification for Rule violations, or seek other protections with dealers who assign credit and lease contracts to them. Indeed, the FTC states that finance companies can take steps to ensure that dealers are obtaining EIC, for example.[137] Dealers should carefully review any such contractual modifications with their legal counsel.

VIII. RECORDKEEPING REQUIREMENTS

The Rule requires dealers to create and retain records that demonstrate the dealer's compliance with the Rule for 24 months.[138] A dealer's failure to maintain, or inability to produce, records that they complied with the requirements of the Rule is its own independent violation of the Rule, and the FTC does not need to establish that the dealer violated any other part of the Rule.[139]

As noted, this obligation includes the duty not only to maintain such records, but also to "create" them. This duty would seem to indicate that dealers must either create written records or create oral records of oral communications or notices. Given the difficulty of creating oral records (and the legal issues raised by recording consumer interactions), dealers may find it necessary to make all disclosures in writing in order to demonstrate compliance with the Rule.

The FTC notes that this provision will help ascertain dealer's compliance with the Rule, preserve records of potential violations, and identify persons involved in challenged practices and consumers who might have been injured by such practices.[140]

The Rule's 24-month retention period is a minimum requirement. Dealers may want to retain many of these records for longer periods of time to comply with other federal and state retention requirements, as well as applicable statutes of limitations for claims arising from vehicle purchase and lease transactions.[141] The FTC has also left open the possibility that it may lengthen the retention period in the future if it determines that the 24-month period is insufficient to determine compliance with the Rule.[142]

The Rule states that dealers must create and maintain all records necessary to demonstrate compliance with the Rule, including:[143]

> *(1) Copies of all materially different advertisements, sales scripts, training materials, and marketing materials regarding the price, financing, or lease of a vehicle, that the dealer disseminated during the relevant time period; Provided that a typical example of a credit or lease advertisement may be retained for advertisements that include different vehicles, or different amounts for the same credit or lease terms, where the advertisements are otherwise not materially different[.]*

The FTC notes that this requirement is important because advertisements are often a consumer's first contact with a dealership, and the reason a consumer visits a dealership. In addition, the FTC states that it is important to retain scripts and training materials to see what information and instructions dealers are giving their personnel regarding areas covered by the Rule.[144]

For advertisements, the FTC states that a dealer may retain a typical example of a credit or lease advertisement that include different vehicles or different amounts for the same credit or lease terms where the advertisements are otherwise not materially different.[145] The FTC requires that the typical examples "capture all differences that would be material to consumers."[146]

It is therefore unclear whether an advertisement that requires a different down payment/amount due at signing, or requires financing through a different financing institution, would constitute material differences. Dealers should consider retaining advertisements that have different payment terms and potentially other terms such as finance company restrictions, etc.

> *(2) Copies of purchase orders, financing and lease documents signed by the customer, whether or not final approval is received for a financing or lease transaction.*

This requirement is not unique to the Rule, and similar obligations can be found in state law and in other federal regulations pertaining to credit transactions and discontinued or "dead" deals. Dealers should ensure they are maintaining records of both consummated transactions and unconsummated financing or lease transactions in an organized and indexed manner so that the records can be easily retrieved should the dealer be required to produce them.

(3) All written communications relating to sales, financing, or leasing between the dealer and any consumer who signs a purchase order or financing or lease contract with the dealer.

This is a new, burdensome requirement that mandates that dealers maintain nearly all communications to and from sales and lease customers. This includes internet leads, emails, text messages, website chat modules, social media messages, service department communication software, etc. A dealer does not know at the beginning of negotiations or discussions whether a customer will ultimately purchase or lease a vehicle, and it likely would not be feasible to retrace all communications after the fact and retain only those related to a consummated sale or lease transaction. Practically, a dealer needs to retain **all** customer communications on the sales side in a manner that is searchable should records need to be produced. In addition, dealers should consider how to retain service records to the extent those records might constitute communications relating to sales, financing, or leasing (e.g., discussions of trading in their existing vehicle for a new vehicle).

In order to retain these communications in a manner that can be stored and retrieved, dealers should consider whether they should implement policies requiring that all communications be sent through a CRM and/or email. Indeed, many modern CRM and other similar systems have evolved to offer a wide range of communication channels that can be seamlessly integrated and centralized, allowing the dealer to interact with their customers through various means such as text messaging, phone calls, and emails. Potentially, employees would be prohibited from communicating with customers on their personal devices or accounts because of the difficulty of maintaining records of these dispersed communications, particularly after an employee's employment is terminated.

(4) Copies of all written consumer complaints relating to sales, financing, or leasing.

Dealers are also required to maintain complaints for 24 months. The FTC notes that these records are necessary to address unfair and deceptive practices and aid the FTC's enforcement of the Rule.[147] Dealers should give the same consideration to these types of communications as to the communications discussed in subsection (2), above. Communications with customers that are centralized within a CRM or similar system will aid in compliance with this requirement. To satisfy this requirement, a dealer must maintain complaints from consumers who did not sign a purchase, finance, or lease contract.

It is not always easy to determine what constitutes a "complaint," and the FTC provides no guidance on determining what type of consumer feedback rises to the level of a "complaint." Dealers should analyze this issue and train employees to ensure that any feedback that could be deemed a complaint is categorized as such, and that records of all complaints are maintained.

(5) Copies of written inquiries related to Add-ons.

In addition to complaints discussed above, the Rule also requires dealers to retain all written inquiries related to Add-ons. This requirement is an effort to avoid a loophole that would require complaints to be retained, but not general inquiries where a customer is expressing dissatisfaction. The FTC cites an example where a customer might send an email that asks why they were charged for an Add-on that they did not agree to.[148] In this scenario, the email may not constitute a complaint but would be a communication that suggests a violation of the Rule and that the FTC wants dealers to retain. The FTC also requires dealers to maintain records of inquiries related to Add-ons. This broad requirement requires a dealer to maintain all inquiries from consumers relating to Add-ons, even communications from consumers who did not sign a purchase, finance, or lease contract.

(6) Copies of written inquiries and responses about vehicles subject to disclosure requirements.

This is another broad requirement that mandates that a dealer retain all inquiries and responses pertaining to the disclosure requirements under § 463.4 that require disclosure of the Offering Price, that Add-ons are not required, the total of payments and consideration for a financed or lease

transaction, and the monthly payment comparison disclaimer in certain circumstances. This requirement is also not limited to customers who sign a contract, meaning that dealers will need to maintain records of these communications with all customers in addition to written communications. This provision could apply to written statements made during deal negotiations.

From a practical perspective, it will probably be difficult for dealers to separate communications from customers who signed a contract, consumer complaints, inquiries related to Add-ons, and inquiries about vehicles subject to disclosure requirements from other written communications that are not subject to the record retention requirement. These categories likely cover the vast majority of communications that a dealer has with consumers related to vehicle sales and leases. As a result, it may be most practical to retain all communications with sale and lease customers to avoid the time and expense of filtering.

Dealers should seriously consider centralizing their communications through a CRM or other mechanism in order to streamline the recordkeeping process. The FTC suggests that dealers will need to ensure communications are made through "appropriate channels that can be monitored and controlled by the dealership."[149]

The FTC notes that the Rule permits the dealer to store records in any legible format[150] and thus, to the extent that the communications discussed above are made through a third party or stored on a third-party system, the dealer may save them on that system. If the dealer transitions to a new system or alters an existing system, the dealer must export or backup those records. This means that dealers must ensure their third-party service providers maintain records of the communications, and that there is a process to transfer those communications to the dealer in a legible format should the relationship terminate in the future.

> *(7) Records demonstrating that Add-ons in consumers' contracts meet the requirements of [the Rule], including copies of all service contracts, GAP Agreements and calculations of LTV ratios in contracts including GAP Agreements.*

This requirement means that dealers must maintain records demonstrating that the Add-ons they sell provide a general benefit and a benefit to the specific consumer, as discussed in more detail in Section 6. For GAP contracts, dealers must maintain the records of the LTV calculations they performed. An additional best practice recommendation is for the dealer to place full copies of all GAP contracts, service contracts, subscriptions, etc. in the deal file for the vehicle so that they can be easily referenced if needed later. This requirement also means that the dealer must maintain written evidence that a consumer gave EIC to the Add-ons.

Other records that dealers need to maintain include records evidencing that required disclosures were made such as Offering Price disclosures, that Add-ons are not required, total of payments disclosures, and monthly payment comparison disclosures. This recordkeeping requirement would include documents such as F&I menus, deal negotiation worksheets, four-square-type documents, etc.

Of the records identified in the paragraphs above, the FTC notes that translations of the documents must also be retained for the 24-month retention period. For documents referred in paragraph (1) above, translations of "materially" different documents must be maintained.[151]

As noted above, the Rule allows the required records to be maintained in any legible form and in the same manner, format, or place that the dealer keeps its records in the ordinary course of business.[152] As discussed above, dealers need to ensure that service providers are capable of maintaining records as required and are able to transfer the records to the dealer if the service provider's services are terminated. A dealer should consider periodically backing up its records stored by a service provider to minimize the impact of data loss or issues with end of relationship transitions.

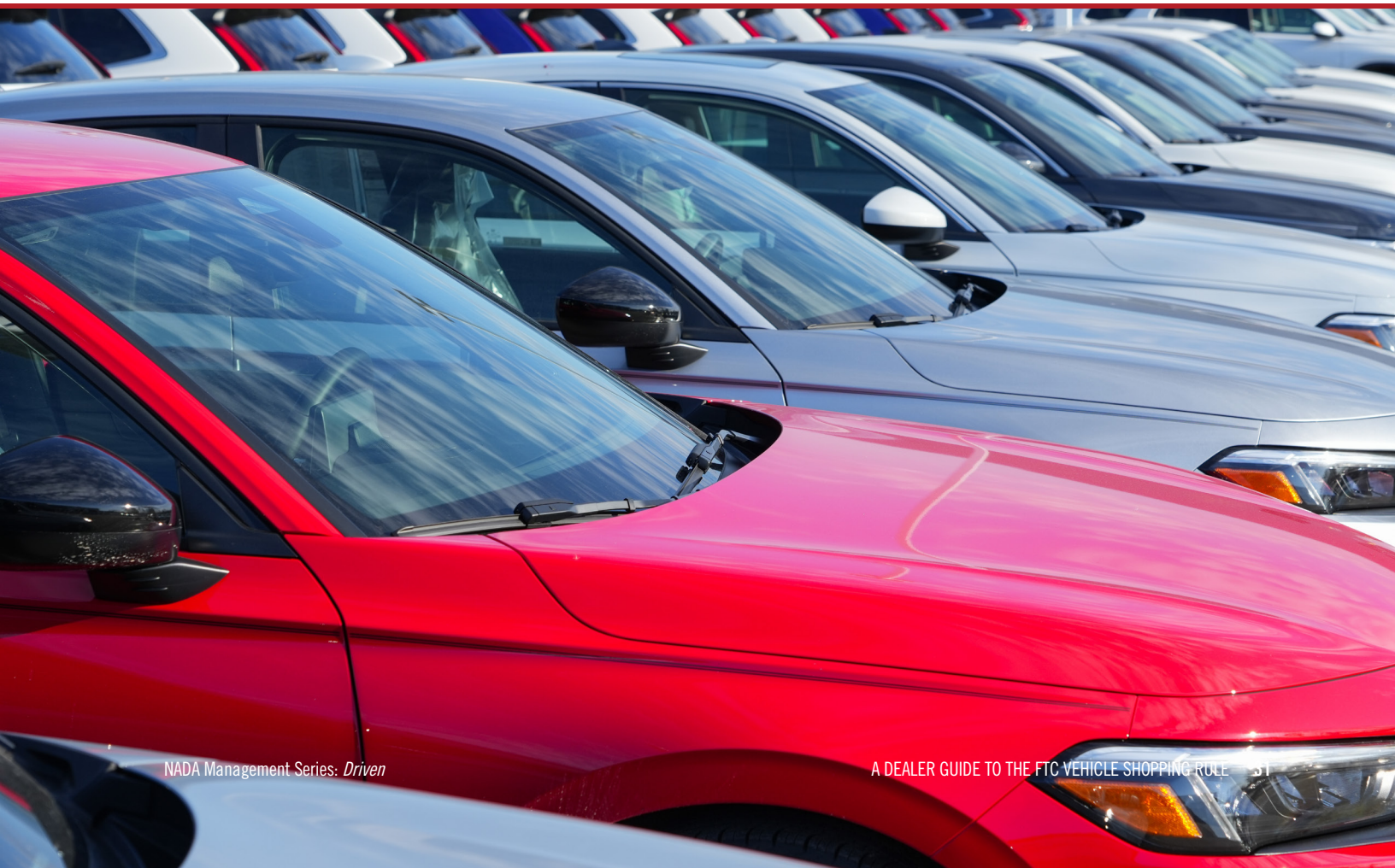
IX. WAIVERS PROHIBITED

It is a violation of the Rule for anyone to obtain – or even attempt to obtain – a waiver from a consumer of any protection or right the Rule extends to them.[153] Dealers should not seek to have anyone waive the application of the Rule or any rights that the person may have under the Rule, even in a business-to-business transaction.[154]

APPENDICES

Legal Disclaimer: The following appendices have been prepared for informational purposes only and are not intended as legal advice. The requirements of the Vehicle Shopping Rule (the "Rule or the "VSR" (elsewhere referred to as the "CARS" Rule)) and the circumstances of every dealership are complex, and dealers should not simply adopt the sample disclosure forms or any of the components without first consulting with legal counsel. In addition, this guide discusses only the VSR; it does not discuss state or local law that may impose additional requirements or requirements that may apply to a dealership by contract. Dealerships should draft and implement required policies and procedures appropriate to its own operations and ensure that such procedures are reviewed by legal counsel.

The presentation of this information is not intended to encourage concerted action among competitors or any other action on the part of dealers that would in any manner fix or stabilize the price or any element of the cost of any good or service.



CARS Rule Policy

Last Updated: [DATE]

In 2023, the Federal Trade Commission (FTC) finalized the Combating Auto Retail Scams Rule (CARS Rule) which affects the way that dealerships do business.

The following are essential requirements of the CARS Rule which all employees must read and understand:

1. **First Communication** - in the first communication with a customer inquiring about a specific vehicle or any monetary amount or financing term for any vehicle or group of vehicles, you must disclose the "Offering Price." This is not the MSRP. The "Offering Price" is the total cash price that the dealership will sell or finance the vehicle that includes all non-governmental charges, such as document processing fees and mandatory Add-ons. The "Offering Price" can only exclude required government charges, such as tax and license fees.

   If you are not sure what it is, check with your supervisor. This applies to communications made over text, e-mail, telephone, in-person and any other methods.

2. **Monthly Payments** - We cannot display a monthly payment without disclosing (1) the total amount the customer will pay after making all payments and (2) the total amount due at signing or any down payment.

   When comparing two monthly payments with varying terms or durations, you must include a clear disclosure that the customer will pay more over the life of the loan of the lower payment, if true.

3. **Vehicle Availability** - We cannot advertise a vehicle that isn't actually available for sale, such as a vehicle that has already been sold. This also applies to vehicles still in recon, in transit or at another location, unless the advertisement contains a clear and conspicuous disclosure noting the vehicle's status and location. It is important for you to notify your supervisor when a car is sold or unavailable so that it is removed from any ads.

4. **Pre-Approval Claims** - We cannot give customers the impression that they have been "pre-approved" for financing or lease offers. All finance and lease offers are subject to credit approval.

5. **"Everyone Financed" is Not True and Not Permitted** - Statements like "everyone financed" or "no credit rejected" are prohibited. All finance and lease offers are subject to credit approval.

Appendix Disclaimer: This appendix and sample forms are for informational purposes only and have not been reviewed or approved for use by the Federal Trade Commission. Dealerships should consult with legal counsel to determine appropriate use of the forms as well as compliance with state and local laws.

6. **No Discount/Rebate Stacking** - We cannot stack discounts and/or rebates in a manner that a typical consumer would not qualify for simultaneously.

7. **Record Retention** - The CARS Rule requires us to maintain all written communications for 24 months if a customer purchases or leases a vehicle. This includes, but is not limited to, emails, text messages, and any other written communications with a customer. Therefore, absent extraordinary circumstances, all such written communications with a customer should be through the CRM, company email account, and/or other dealer approved communication system. Written communications with customers occurring through personal mobile devices or social media accounts are prohibited.

8. **Vehicle Add-ons** - Any optional items added to the vehicle that are not installed by the original manufacturer must be clearly disclosed to the customer and they must be informed that the optional Add-ons are not required to purchase or lease the vehicle. We also cannot sell vehicle Add-ons that would not provide a benefit to the customer, like service contracts that duplicate warranty coverage or GAP on vehicles with a low loan-to-value (LTV) ratio.

9. **No Misleading, Untruthful Information** - Do not lie or mislead a customer about anything, even if it hasn't been covered here.

10. **Consequences** - We take these laws seriously, not just because it is the law, but also because we want to do right by our customers. We expect you to comply with these requirements and your failure to do so may result in discipline, up to, and including, immediate termination of employment.

By signing this policy, you agree that you have read, understood, and agree to abide by it. You also understand the consequences of not following the policy.

Signature: _____ Date: _____

Appendix Disclaimer: This appendix and sample forms are for informational purposes only and have not been reviewed or approved for use by the Federal Trade Commission. Dealerships should consult with legal counsel to determine appropriate use of the forms as well as compliance with state and local laws.

Appendix B: Sample Offering Price Disclosure Form

OFFERING PRICE DISCLOSURE FIRST COMMUNICATION

At the time of your inquiry about

STOCK # _____

or any monetary amount or financing term for any vehicle or group of vehicles, the Offering Price is/was:

Offering Price
$

NOTE: If providing a price for a group of vehicles and the prices differ, then provide a range of prices ($XX,XXX-$XX,XXX)

_____

CUSTOMER SIGNATURE *(optional)*

_____

DATE

This notice was provided as part of the first response to this customer inquiry and reflects the current Offering Price. This Offering Price is subject to change and this disclosure does not make any promises about the future availability of this vehicle or its future Offering Price. Nor does this disclosure obligate the dealer to sell, finance, or lease this vehicle or any other vehicle to the customer.

Offering Price Disclosure Form

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Appendix C: Sample Total of Payments Disclosure Form

TOTAL OF PAYMENTS DISCLOSURE

STOCK NUMBER:		**The following monthly payment was discussed with the consumer:**	
ASSUMED CONSIDERATION:	$	**MONTHLY PAYMENT:**	$
CHECK ALL THAT APPLY: ☐ DOWN PAYMENT ☐ TRADE-IN VALUATION ☐ OTHER ☐ NONE			☐ SALE or ☐ LEASE
		TERM:	MONTHS
TOTAL AMOUNT	**TOTAL AMOUNT THE CONSUMER WILL PAY TO PURCHASE OR LEASE THE VEHICLE AT THAT MONTHLY PAYMENT (INCLUDING ASSUMED CONSIDERATION) AFTER MAKING ALL PAYMENTS AS SCHEDULED WILL BE:**		$

CONSUMER NAME: _____ **DATE:** _____

CONSUMER SIGNATURE: _____ *(optional)*

NOTE

This is a disclosure document only, intended solely to comply with regulatory requirements. This does not constitute any promise or representation as to a consumer's qualification or approval for any monthly payment, any lease or financing approval of any kind, or for any particular required level of down payment or other consideration that may be required. The information disclosed does not constitute an agreement to sell or lease at any price, to pay any amount for a trade-in, or any assurance that the vehicle will be available for sale in the future.

Total of Payments Disclosure Form

Appendix Disclaimer: This appendix and sample forms are for informational purposes only and have not been reviewed or approved for use by the Federal Trade Commission. Dealerships should consult with legal counsel to determine appropriate use of the forms as well as compliance with state and local laws.

Appendix D: Sample Monthly Payments Comparison Form

MONTHLY PAYMENTS COMPARISON

A comparison between monthly payment options was discussed with the consumer listed below, and the second monthly payment option discussed is a lower monthly amount:

STOCK NUMBER:			
First monthly payment option:		**Second (lower) monthly payment option:**	
MONTHLY PAYMENT:	$	**MONTHLY PAYMENT:**	$
	☐ SALE or ☐ LEASE		☐ SALE or ☐ LEASE

The second monthly payment option is a lower monthly amount, but it will increase the total amount the consumer will pay to purchase or lease the vehicle.

CONSUMER NAME: _____ **DATE:** _____

CONSUMER SIGNATURE: _____ *(optional)*

NOTE

This is a disclosure document only, intended solely to comply with regulatory requirements. This does not constitute any promise or representation as to a consumer's qualification or approval for any monthly payment, any lease or financing approval of any kind, or for any particular required level of down payment or other consideration that may be required. The information disclosed does not constitute an agreement to sell or lease at any price, to pay any amount for a trade-in, or any assurance that the vehicle will be available for sale in the future. The total of payments for each monthly payment outlined above has been separately disclosed to the consumer.

Monthly Payments Comparison Form

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Appendix E: Sample Optional Products Disclosure Form

OPTIONAL PRODUCTS DISCLOSURE

[ACME Motors] has mentioned, discussed, and/or offered the Optional products or services* listed below to the consumer. All of these optional products are optional, and consumer is not required to purchase any optional products in connection with the purchase or lease of any vehicle from [ACME Motors].

Optional Products offered to, or discussed with, consumer:
(1)
(2)
(3)
(4)
(5)

Consumer understands that they should make their own determination as to the benefit of any product or service to their specific personal circumstances.

This document is for disclosure purposes only, and it does not list or control any charges for, or disclosures about optional products provided elsewhere by [ACME Motors]

Consumer Name _____ Date _____

Consumer Signature _____ *(optional)*

SIGNING THIS DOCUMENT DOES NOT OBLIGATE CONSUMER TO PURCHASE OR NOT TO PURCHASE ANY OPTIONAL PRODUCT OR SERVICE. IT IS A REQUIRED DISCLOSURE OF THE OPTIONAL NATURE ONLY.

Optional Products Disclosure

**Optional product or service* is any optional product or service for which ACME Motors charges the consumer (at consumer's sole option) in connection with a vehicle sale or lease and that is provided to the consumer or installed on the vehicle by [ACME Motors] or anyone else other than the vehicle manufacturer.

[ACME Motors] makes no representation or warranty of any kind in this disclosure document about the quality or nature of any optional product or service.

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Appendix F: Sample Contract Items Disclosure Form

CONTRACT ITEMS DISCLOSURE

Dealerships should consult with legal counsel familiar with their dealership operations and state law when using or amending this form.

Buyer Name: ("You" or "Your")	**Co-Buyer Name:** ("You" or "Your")	**Contract Date:**	**Dealership Name:**
Address:	**Address:**	**Year:**	
		Make:	
		Model:	
		VIN:	

This document lists the items that will be charged in connection with Your purchase or lease of the vehicle identified above.

I AGREE TO BE CHARGED FOR THE FOLLOWING ITEMS:

Initials Buyer/Co-Buyer	A. Optional Items, Add-ons, Products, Goods, and Services Customers are not required to purchase the following:	Charge		
		Amount of Charge	All fees and costs to be charged over the period of repayment	
			With the ITEM	Without the ITEM
/	(1) Vehicle Stock Number			
/	(2)			
/	(3)			
/	(4)			
/	(5)			
/	**ALL ITEMS LISTED IN THIS SECTION ARE OPTIONAL AND I AM CHOOSING TO PURCHASE THESE ITEMS. I UNDERSTAND THAT THESE ARE NOT A CONDITION OF A [VEHICLE] PURCHASE OR LEASE.**			

Initials Buyer/Co-Buyer	B. Mandatory Items, Add-ons, Products, Goods, and Services Customers are required to purchase the following:	Charge		
		Amount of Charge	All fees and costs to be charged over the period of repayment	
			With the ITEM	Without the ITEM
/	(1)			**N/A**
/	(2)			**N/A**
/	(3)			**N/A**
/	(4)			**N/A**
/	(5)			**N/A**
/	**ALL ITEMS LISTED IN THIS SECTION ARE MANDATORY AND MUST BE CHARGED IN CONNECTION WITH THIS PURCHASE OR LEASE.**			

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Appendix F: Sample Contract Items Disclosure Form (cont'd)

Initials Buyer/Co-Buyer	C. Other Miscellaneous Mandatory Items Which are Not Products or Services The following charges are required:	Amount of Charge
/	(1) Document Processing Charge:	
/	(2) Emissions Testing Charge:	
/	(3) Sales Tax:	
/	(4) Registration/Transfer/Title:	
/	(5) Vehicle License	
/	(6) Other Fee: (describe here):	
/	(7) Other Fee: (describe here):	
/	(8) Other Fee: (describe here):	
/	(9) Other (specify):	
/	(10) Other (specify):	
/	(11) Other (specify):	
/	**ALL ITEMS LISTED IN THIS SECTION ARE MANDATORY AND MUST BE CHARGED IN CONNECTION WITH THIS PURCHASE OR LEASE.**	

Initials Buyer/Co-Buyer	D. Other Miscellaneous Optional Items Which are Not Products or Services Customers are not required to purchase the following:	Amount of Charge
/	(1) Prior Credit or Lease Balance:	
/	(2) Finance Charge (amount provided on TILA disclosure):	
/	(3) Other (specify):	
/	**ALL ITEMS LISTED IN THIS SECTION ARE OPTIONAL AND I AM CHOOSING TO PURCHASE THESE ITEMS. I UNDERSTAND THAT THESE ARE NOT A CONDITION OF A [VEHICLE] PURCHASE OR LEASE.**	

Initials Buyer/Co-Buyer	By signing below, You acknowledge and agree that:
/	1. Charges for all of the Mandatory and Optional Items described in this document will be included in Your purchase or lease contract for the above-mentioned vehicle.
/	2. You are not required to purchase any of the Optional items listed above.
/	3. You have received a completely filled-in copy of this document prior to You signing this form.
/	4. This document was presented to You before You signed the purchase or lease agreement for the above-mentioned vehicle, and in close proximity to the time that a clear description of the nature of each item listed above was provided to You in detail.
/	5. CHARGES FOR ALL ITEMS WERE PRESENTED TO ME ORALLY IN ADDITION TO AND CONSISTENT WITH THIS DOCUMENT

I UNDERSTAND THE CONTENTS OF THIS DOCUMENT, I HAVE BEEN INFORMED ABOUT EACH ITEM ABOVE, AND BY SIGNING BELOW, I CONSENT TO THE CHARGES FOR EACH ITEM LISTED ABOVE.

I UNDERSTAND THAT THE OPTIONAL ITEMS ABOVE ARE NOT REQUIRED FOR PURCHASE OR LEASE.

Buyer's Signature _____ Date _____

Co-Buyer's Signature _____ Date _____

Contract Charges Disclosure Form

Appendix Disclaimer: This appendix and sample forms are for informational purposes only and have not been reviewed or approved for use by the Federal Trade Commission. Dealerships should consult with legal counsel to determine appropriate use of the forms as well as compliance with state and local laws.

Appendix G: Sample Export Control/Disclosure Form

VEHICLE MOVEMENT RESTRICTIONS DISCLOSURE FORM

Buyer/Lessee Name: ("You" or "Your")	**Co-Buyer/Co-Lessee Name:** ("You" or "Your")	**Contract Date:**	**Dealership Name:**

Address:	**Vehicle Information:**	**Year:**	
		Make:	
		Model:	
		VIN:	

You understand that the above-mentioned vehicle is subject to the following restrictions pertaining to where the vehicle can be moved, as noted in the lines that are checked below:

☐ **THERE ARE NO RESTRICTIONS ON THE MOVEMENT OR LOCATION OF THIS VEHICLE.**

Initials Buyer/Co-Buyer	The boxes checked below indicate restrictions* that apply to Your purchase or lease of this vehicle:
/	☐ The vehicle may not be moved outside of the State of _____ .
/	☐ The vehicle may not be moved outside of the United States of America.
/	☐ The vehicle is subject to the following restriction(s) on its movement: _____ _____ .

BY SIGNING BELOW, YOU ACKNOWLEDGE AND AGREE THAT YOU UNDERSTAND THESE RESTRICTIONS AND THAT YOU RECEIVED A COPY OF THIS COMPLETED FORM BEFORE YOU SIGNED YOUR PURCHASE OR LEASE CONTRACT. THIS DOCUMENT SUPPLEMENTS AND IS INCORPORATED INTO YOUR PURCHASE OR LEASE CONTRACT.

Buyer's Signature _____ Date_____

Co-Buyer's Signature _____ Date_____

Vehicle Movement Restrictions Disclosure Form

Appendix Disclaimer: This appendix and sample forms are for informational purposes only and have not been reviewed or approved for use by the Federal Trade Commission. Dealerships should consult with legal counsel to determine appropriate use of the forms as well as compliance with state and local laws.

ENDNOTES

1 CARS is an acronym for "Combatting Auto Retail Scams."

2 At the time of publication of this guide, the civil penalty amount is $51,744. However, the FTC adjusts the maximum civil penalty dollar amounts for violations of law the FTC enforces, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The Act directs the FTC to implement annual inflation adjustments based on a prescribed formula. The new maximum civil penalty amounts become effective once they are published in the Federal Register, typically in January.

3 16 C.F.R. § 463(f) (2024).

4 89 Fed. Reg. 608 (2024).

5 *Id.*

6 While this is not explicitly spelled out in the Rule, the FTC has made that clear through numerous enforcement actions.

7 *See e.g.*, Advertising FAQ's: A Guide for Small Business | Federal Trade Commission (ftc.gov), available at: https://www.ftc.gov/business-guidance/resources/advertising-faqs-guide-small-business (archived at: https://perma.cc/ZY8N-4A8U).

8 16 C.F.R. § 463.2(e) (2024).

9 Whether the FTC has the authority to apply Section 5 rules related to unfair or deceptive acts or practices to commercial transactions is an unsettled issue, but the FTC has brought several enforcement actions for business-to-business conduct. *See* Complaint *Fed. Trade Comm'n v. Yellowstone Capital* (June 21, 2022); Complaint *Fed. Trade Comm'n v. First Am. Payment Sys.* (July 29, 2022).; Complaint *In the Matter of Fleetcor Technologies, Inc.* (Jan. 29, 2024); Complaint *Fed. Trade Comm'n v. Amazon* (Nov. 2, 2021).

10 At the time of the publication of this Guide, NADA's legal challenge to the Rule argues that fines may not actually apply to violations of the Rule. In this Guide, however, it is assumed that such fines do apply to Rule violations and the civil penalty amount is currently $51,744. As noted above, the FTC adjusts the maximum civil penalty dollar amounts for violations of law the FTC enforces, as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The Act directs the FTC to implement annual inflation adjustments based on a prescribed formula. The new maximum civil penalty amounts become effective once they are published in the Federal Register typically in January.

11 15 U.S.C. Sec. 57b.

12 Dealers should consult with their attorneys about specific state law issues.

13 16 C.F.R. § 463.9(a) (2024). "This part will not be construed as superseding, altering, or affecting any other State statute, regulation, order, or interpretation relating to Covered Motor Vehicle Dealer requirements, except to the extent that such statute, regulation, order, or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency."

14 16 C.F.R. § 463.9(b) (2024). "For purposes of this section, a State statute, regulation, order, or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order, or interpretation affords any consumer is greater than the protection provided under this part."

15 *Id.* at § 463.2(k).

16 *Id.* at § 463.2(i).

17 *See*, e.g., OAR § 137-020-0020(2)(L), (v) (Oregon); Wash. Rev. Code § 46.70.180(2)(b)(iv) (Washington).

18 89 Fed. Reg. 660 (2024).

19 *Id.* at 660 n.441.

20 89 Fed. Reg. 660 (2024).

21 *See*, e.g., Ohio Admin. Code 109:4-3-16(B)(21) (Ohio); Cal. Veh. Code § 11713.1(b) (California).

22 The FTC noted in its commentary to the Rule that, "regarding document fees, dealers can simultaneously comply with [the Offering Price requirements of the Rule] which requires document fees to be included in the Offering Price unless they are "required" government charges, and with State law that permits but does not require document fees to be excluded from a vehicle's advertised price, or that requires disclosure of the amount of the document fee and that such a fee is not required by the State, by disclosing the Offering Price and any additional State-required information,

such as the amount of the dealer document fee." 89 Fed. Reg. 632 (2024).

23 This Guide offers no opinion as to the existence of a specific conflict between the Rule and any state law, or the viability of, or need for, any proposed solution; dealers should consult legal counsel for advice on their individual circumstances.

24 16 C.F.R. § 463.3 (2024).

25 *Id.* at § 463.2(j). Note that the word "material" was added to the final rule because of comments submitted by NADA, which noted that the proposed rule unevenly inserted the term "material" in only some of the misrepresentations and argued that therefore the proposed rule sought to impermissibly apply Section 5 to non-material statements.

However, it is far from clear that the linguistic "fix" that the FTC has used in the final rule accomplishes the agency's stated goal. That is because it has inserted the word "material" to modify "information," rather than "misrepresentation." In other words, the Rule prohibits *any* misrepresentation about material information. So, for example, because price is "material" information, *any* misrepresentation about price would ostensibly violate the Rule.

That is, if an advertised or represented price were off by $.01, that would be a misrepresentation about material information under the Rule as drafted. While NADA does not believe that is the FTC's goal, the Rule says what it says.

26 89 Fed. Reg. 612 (2024).

27 FTC Statement on Deception, 103 F.T.C. 174, 175 (1984) (appended to Cliffdale Assocs., Inc., 103 F.T.C. 110 (1984)).

28 89 Fed. Reg. 612, n.180 (2024).

29 89 Fed. Reg. 612 (2024). The FTC states that "whether an [implied] misrepresentation has occurred depends on the facts," and "whether an [implied] misrepresentation has occurred is often evident from an examination of the representation itself." What "implied" misrepresentation appears to mean, therefore, is an affirmative representation (about material information) that could be interpreted by a reasonable consumer to be implying a misleading claim.

30 *Id.*

31 The FTC also provided a second, more curious, example: "Take, for example, an advertisement that shows a picture of a new sedan for sale. Even if the advertisement does not expressly state that consumers could use the vehicle to drive at speeds higher than 25 miles per hour, there is an implied representation that a product is fit for the purposes for which it is sold." 89 Fed. Reg. 612 (2024). This example is even more curious as it seems to relate to an implied representation about an implied warranty of fitness for a particular purpose which, in many cases, retailers would neither be aware of nor responsible for.

32 Dealers should note that *any* material misrepresentation – whether about an issue specifically enumerated in the Rule or not - could arguably independently violate Section 5 of the FTC Act.

33 89 Fed. Reg. 613 fn 182 (2024).

34 *Id.* at 611, 613.

35 *Id.* at 613.

36 While the term "Voluntary Protection Products" more accurately identifies the types of products and services the FTC often classifies as "Add-ons," this guide uses the term "Add-ons" to avoid confusion as it is the term used by the FTC in the Rule.

37 See discussion *supra* re "Add-on Products and Services."

38 16 C.F.R. § 463.2(a) (2024). Add-ons are discussed in greater detail below.

39 89 Fed. Reg. 614 (2024).

40 89 Fed. Reg. 614 (2024).

41 *See* 16 C.F.R. § 239.4 (2022).

42 89 Fed. Reg. 614 (2024).

43 *See*, 89 Fed. Reg. 614 n.188, 189 (2024). *See also*, Complaint ¶62 *Fed. Trade Comm'n v. Rhinelander Auto Center, Inc., et al.*, No. 3:23-cv-737 (W.D. Wis. October 24, 2023) (alleging misrepresentations that purchase of Add-on products was required to purchase, finance, or lease vehicles); Consumer Fin. Prot. Bureau, 2023-CFPB-0015, *In re Toyota Motor Credit Corp.* (2023) (consent order issued against finance company for allegedly making it unfairly difficult for consumers to cancel Add-on products and delaying issuance of refunds).

44 *See* Complaint ¶¶ 38-39, *Fed. Trade Comm'n v. Tate's Auto Ctr.*, No. 3:18-cv-08176-DJH (D. Ariz. July 31, 2018) (alleging false ads touting attractive terms but concealing ads were for lease offers only); Complaint ¶¶ 10, 13, *TC Dealership, L.P.*, No. C-4536 (FTC Aug. 13, 2015) (same); Complaint ¶¶ 9-12, *Cowboy AG, LLC*, No. C-4639 (FTC Jan. 4, 2018) (same); Complaint ¶¶ 36-38, *United States v. New World Auto Imports, Inc.*, No. 3:16-cv-02401-K (N.D. Tex. Aug. 18, 2016) (alleging misrepresentation that terms were for financing instead of leasing); Complaint ¶¶ 28-37, 44, *Fed. Trade Comm'n v. Universal City Nissan, Inc.*, No. 2:16-cv-07329 (C.D.

Cal. Sept. 29, 2016) (alleging advertisements with key terms that were not generally available).

45 Dealers are reminded of the trigger term requirements applicable to consumer leases set forth in the Federal Reserve Board's Regulation M. 12 C.F.R. § 213.7. *See also:* NADA's Driven Guide: Federal Truth in Lending Requirements https://www.nada.org/nada/education-consulting/driven-management-guide/federal-truth-lending-requirements-l57.

46 16 C.F.R. § 463.3(d) (2024).

47 89 Fed. Reg. 615 (2024).

48 87 Fed. Reg. 42,020 (2022).

49 *See* 87 Fed. Reg. 42,020 fn. 94-96 (2022); 89 Fed. Reg 615 fn. 194, 195 (2024).

50 89 Fed. Reg. 616 (2024).

51 The FTC introduces some ambiguity in this section with its use of the term "advertised price," especially since the FTC does not clarify the distinction, if any, between "advertised price" and "Offering Price." Nor does the FTC explain why, if the "advertised price" is the same as the "Offering Price" a different term was used. Assuming that the FTC used the term "advertised price" intentionally to refer to a price that is different from the "Offering Price," it seems plausible that such an advertised price could be "net cost" or a price that includes a limited discount or rebate that lowers the price from the Offering Price (provided the existence and conditions of the discount and rebate are clearly and conspicuously disclosed), or a specific deal structure, that is not available to all customers. While the FTC has not explicitly endorsed this interpretation of "advertised price," this would also be consistent with the FTC's use of the term "Offering Price" to be the total price excluding government charges that a dealer would sell a vehicle to any consumer. The dealer would be able to display an Offering Price that is available to anyone, and a separate advertised price that includes properly disclosed conditional rebates or discounts. As noted, the FTC provides no explanation for the term "advertised price," and the interpretation in this paragraph is speculative. The critical point is that an Offering Price is always required in an advertisement for a specific vehicle or an advertisement with a monetary amount or financing term for any vehicle. See discussion of Offering Price in Section 7.

52 89 Fed. Reg. 615-16 (2024).

53 This conservative interpretation is based on the FTC commentary to the Rule in which the Commission suggests that advertising rebates or discounts not available to all consumers, either separately or included in the advertised price, would violate the Rule. The FTC states: "The NPRM's discussion of proposed § 463.3(d) described both a scenario in which a dealer advertised a rebate or discount separately, and one in which rebates or discounts are factored into the advertised price but the rebates and discounts are not available to a typical consumer. The conduct in either such scenario would violate this provision and, depending on the circumstances, may violate other provisions the Commission is finalizing, such as paragraph (a) of § 463.3." *See* Id. at 615

54 Dealers should also keep state advertising laws in mind, for example: some states do not permit factoring rebates into the "price" of a vehicle, even if the rebate is available to everyone.

55 *Id.* at 617.

56 Caution is urged on this specific phrasing; the FTC has brought enforcement actions in the past for fine print disclosures that used industry specific terms like "BEACON.". The clearer and more specific the better.

57 *See*, 15 U.S.C. § 1681m(d) (2022).

58 "Prequalification" is typically based on unverified customer information and provides a general indication of whether a customer would qualify for financing. "Preapproval" typically requires a customer to provide extensive documentation regarding income, employment, savings, and debt and is an indication of likely approval of financing.

59 Intentional misstatements on credit applications can lead to allegations of fraud and more serious federal crimes. Existing consequences can include civil lawsuits, civil licensing enforcement actions, criminal charges, and associated fines, injunctions, and other penalties. This includes issues like fabricated or altered income or other information, or other fraudulent practices such as "power booking" which involves misrepresenting the nature of the collateral (the vehicle) to a lender in order to gain credit approval.

60 89 Fed. Reg. 618 (2024).

61 *Id.*

62 *Id.*

63 89 Fed. Reg. 618 (2024). The FTC does not clarify the bounds of "proper" responses to consumer inquiries about listing income.

64 *Id.*

65 To be clear, the FTC expressly declined in the final rule to prohibit conditional deliveries, the overwhelming

majority of which provide convenience and value to consumers. However, this is an area where caution is warranted. *Id.* at 619.

66 *Id.* at 619-620.

67 *Id.*

68 *Id.* at 619.

69 *Universal City Nissan*, No. 2:16-cv-07329 at ¶¶28-34, 54-55 (C.D. Cal. Sept. 29, 2016) (alleging failure to disclose remaining amount due on trade-in would be added to the consumer's new financing or lease balance); *Ramey Motors*, No. C-4354 at ¶4 (FTC Apr. 19, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt); *Billion Auto*, No. C-4356 at ¶4 (FTC May 1, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt); *TXVT Ltd. P'ship*, No. C-4508 at ¶¶7-11 (FTC Feb. 12, 2015) (alleging false ads that consumers could exit existing debt or leases for $1); Complaint, In re *Frank Myers Automaxx, LLC*, No. C-4353 at ¶4 (FTC Apr. 19, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt and leases); *Key Hyundai of Manchester*, No. C-4358 at ¶6 (FTC May 4, 2012) (alleging false ads promising to pay off consumers' existing motor vehicle debt and leases)

70 89 Fed. Reg. 621 (2024).

71 *Id.* at 622.

72 16 C.F.R. § 465 (2024). See also *Federal Trade Commission Announces Final Rule Banning Fake Reviews and Testimonials*, FTC, (Aug. 14, 2024), https://www.ftc.gov/news-events/news/press-releases/2011/05/ftc-finds-broad-compliance-among-auto-dealers-rule-protects-consumers-car-loans-0. https://www.ftc.gov/news-events/news/press-releases/2024/08/federal-trade-commission-announces-final-rule-banning-fake-reviews-testimonials.

73 Available at: https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-publishes-final-guides-governing-endorsements-testimonials/091005revisedendorsementguides.pdf. Archived at: https://perma.cc/97RQ-H9AB.

74 89 Fed. Reg. 623 (2024).

75 *Id.*

76 *See*, e.g., Apex Processing Center, Feb. 6, 2024, available at: https://www.ftc.gov/legal-library/browse/cases-proceedings/2323061-x230038-apex-processing-center. ("the defendants pretended to be affiliated with the U.S. Department of Education, used deceptive loan forgiveness promises, and falsely claimed they were offering relief under the "Biden Loan Forgiveness" plan to lure students and collect millions in illegal upfront fees.") Archived at: https://perma.cc/24NC-SV5V.

77 Note also that the FTC finalized a separate Rule called the "Government and Business Impersonation Rule" (archived at: https://perma.cc/7V9Y-S74H) which prohibits commercial speech that "impersonates" a business or government agency (or officer thereof). The FTC states that Rule would, for example, prohibit:

- **The use of government seals or business logos** when communicating with consumers by mail or online.
- **Spoofing government and business emails and web addresses**, including spoofing ".gov" email addresses or using lookalike email addresses or websites that rely on misspellings of a company's name.
- **Falsely implying government or business affiliation** by using terms that are known to be affiliated with a government agency or business (e.g., stating "I'm calling from the Clerk's Office" to falsely imply affiliation with a court of law)."

Such activities, in addition to violating the Impersonation Rule, would likely also constitute a violation of this subsection.

78 *See Fowlerville Ford*, No. C–4433 at ¶4 (FTC Feb. 20, 2014) (alleging misrepresentation that consumers have won a prize that can be collected at a dealership).

79 While not specifically required by the VSR, it may also be good practice to inform a customer if an OEM has anti-reselling rules. Manufacturers enforce such rules, exemplified in a 2017 case where Ford Motor Company sued professional wrestler John Cena for reselling a custom 2017 Ford GT, allegedly violating the agreement that prohibited its sale within 24 months of purchase. *See Ford Motor Co. v. John Cena*, No. 2:17-cv-13876 (E.D. Mich. 2017).

80 89 Fed. Reg. 623 (2024).

81 *Id.* at 624 (2024).

82 As mentioned previously, while the term "Voluntary Protection Products" more accurately identifies the types of products and services the FTC often classifies as "Add-ons," this guide uses the term "Add-ons" to avoid confusion as it is the term used by the FTC in the Rule.

83 16 C.F.R. § 463.2(a) (2024).

84 89 Fed. Reg. 604 (2024).

85 *Id.*

86 15 U.S.C. § 1638(a) and 12 C.F.R. § 226.4(d)(3). If a dealer requires a consumer to purchase protection products such as an extended service contract, to obtain credit, the cost of the products must be included in the

finance charge and appropriately disclosed. *See also:* NADA's Driven Guide: Federal Truth in Lending Requirements https://www.nada.org/nada/education-consulting/driven-management-guide/federal-truth-lending-requirements-I57.

87 89 Fed. Reg. 604 (2024). The FTC states: "Relatedly, regarding used vehicles, if a prior owner of such a vehicle installed an add-on, and the dealer that subsequently sells such a vehicle requires any consumer to pay charges for the add-on, the amount of those charges must be included in the vehicle's offering price and the dealer must comply with other aspects of the Final Rule, including the express, informed consent requirement at § 463.5(c). If, alternatively, the dealer does not require any consumers to pay for the pre-installed add-on, then the dealer does not have to add that amount to the vehicle's offering price, and there is no charge for that add-on for which the dealer must obtain express, informed consent."

88 Arguably Service Contracts *must* be optional to be a true service contract. Indeed, what distinguishes "service contracts" from warranties under federal law is that a warranty is part of the basis of the bargain for the product – that is, it is included in the price. (See 16 CFR § 700.1, 15 U.S.C. 2301(6) and 15 U.S.C. 2301(8), (distinguishing a warranty as "becom[ing] part of the basis of the bargain.")

89 89 Fed. Reg. 638 (2024).

90 16 C.F.R. § 463.5(c) (2024), 89 Fed. Reg. 630, 649 (2024).

91 *See* 89 Fed. Reg. 646 (2024).

92 16 C.F.R. § 463.5(a) (2024).

93 89 Fed. Reg. 648 (2024).

94 16 C.F.R. § 463.5(a)(1) (2024).

95 89 Fed. Reg. 648 (2024).

96 *Id.*

97 16 C.F.R. § 463.5(a)(2) (2024).

98 In the Rule, "GAP Agreement" means an agreement to indemnify a vehicle purchaser or lessee for any of the difference between the actual cash value of the vehicle in the event of an unrecovered theft or total loss and the amount owed on the vehicle pursuant to the terms of a loan, lease agreement, or installment sales contract used to purchase or lease the vehicle, or to waive the unpaid difference between money received from the purchaser's or lessee's vehicle insurer and some or all of the amount owed on the vehicle at the time of the unrecovered theft or total loss, including products or services otherwise titled "Guaranteed Automobile Protection Agreement," "Guaranteed Asset Protection Agreement," "GAP insurance," or "GAP Waiver." 16 C.F.R. § 463.2(h) (2024).

99 The FTC provides no guidance as to how that determination is to be made or documented. The Rule simply states that if the ratio "would result in the consumer not benefiting financially" the GAP coverage would not provide value. This is the only place where the Rule requires demonstration of a financial benefit.

100 California, for example, caps the LTV ratio and the selling price of GAP products, prohibiting the sale of GAP if the LTV ratio of the amount financed and the value of the vehicle is less than 70%. *See* Cal. Civ. Code § 2982.12(a)(5) (2024). (California also prohibits selling GAP if the amount financed exceeds the coverage under the GAP product, or if the contract's LTV ratio at the contracting date exceeds the maximum LTV ratio covered by the guaranteed asset protection waiver (absent certain specific exceptions).) South Carolina prohibits selling GAP if the LTV ratio of the amount financed and the value of the vehicle is less than 80%. *See* S.C. Code Ann. § 37-30-120(I)(b) (2023).

101 The FTC states that: "Where, for example, State laws restrict the sale of GAP agreements if the LTV ratio for the transaction is below a certain threshold, or require that dealers have a "reasonable belief" that the GAP agreement would benefit the consumer, dealers in that state can, and must, comply with the state law and with the Rule. Pursuant to such state law, dealers would be prohibited from selling the product if the LTV ratio is below the established threshold or if they do not reasonably believe the GAP agreement would benefit the consumer and, pursuant to the Final Rule, if the LTV ratio would result in the consumer not benefitting financially." 89 Fed. Reg. 647 (2024).

102 16 C.F.R. §463.2(d).

103 89 Fed. Reg. 605 (2024).

104 .com Disclosures How to Make Effective Disclosures in Digital Advertising available at: https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf (archived at: https://perma.cc/SKY6-URAQ).

105 16 C.F.R. § 463.4(a) (2024).

106 89 Fed. Reg. 630 (2024).

107 *Id.*

108 *Id.* at 632.

109 *Id.*

110 *Id.* at 634.

111 While dealers are not prohibited from using a limited time offer to generate interest in an advertisement, dealers should exercise caution to avoid deceptive claims related to such offers. In other words, do not

claim an Offering Price is, for example, "available today only" if that is not the case.

112 Note that a dealer may choose to include taxes or other government charges in the Offering Price. As a practical matter, that will often be difficult for a variety of reasons, but it is permitted.

113 *Id.* See also 89 Fed. Reg. 615 (2024).

114 89 Fed. Reg. 634 (2024).

115 *Id.*

116 *Id.*

117 *Id.*

118 *Id.*

119 16 C.F.R. § 463.4(c) (2024).

120 *Id.* at § 463.4(d).

121 *Id.*

122 89 Fed. Reg. 642 (2024).

123 *See* 16 C.F.R. § 463.4(a) (2024).

124 12 C.F.R.§ 1026.24. *See also*: NADA's Driven Guide: Federal Truth in Lending Requirements https://www.nada.org/nada/education-consulting/driven-management-guide/federal-truth-lending-requirements-l57. 12 C.F.R. § 1013. *See also*: NADA's Driven Guide: Federal Consumer Leasing Act Requirements https://www.nada.org/nada/education-consulting/driven-management-guide/federal-consumer-leasing-act-requirements-l34.

125 89 Fed. Reg. 640 (2024).

126 In the absence of explicit FTC requirements, either approach seems reasonable provided that appropriate disclosures are made. The option to include taxes or exclude taxes is supported by other parts of the Rule, namely the ability to exclude Government Charges (which includes taxes) from the Offering Price. Also, the "plus tax" approach is consistent with Regulation Z and Regulation M. Thus, for purposes of this requirement of the Rule, the dealer could note that the total cost is "plus tax," or they could assume a tax rate based on the dealer's locality or the locality where the majority of their customers reside. See e.g., 12 C.F.R. § Pt. 213, Supp. I.

127 89 Fed. Reg. 644, fn. 362 (2024).

128 *Id.* at 644.

129 16 C.F.R. § 463.5(c) (2024).

130 *Id.* at § 463.2(g).

131 *Id.*

132 89 Fed. Reg. 654 (2024).

133 *Id.* at 654.

134 *Id.* at 653.

135 *Id.* at 651.

136 *Id.* at 654.

137 *Id.*

138 16 C.F.R. § 463.6(a) (2024).

139 *Id.* at § 463.6(b).

140 89 Fed. Reg. 656 (2024).

141 *See e.g.,* NADA's Driven Guide: Federal Records Retention and Reporting, https://www.nada.org/nada/education-consulting/driven-management-guide/federal-records-retention-and-reporting-l03.

142 89 Fed. Reg. 656 (2024).

143 16 C.F.R. § 463.6(a)(1)-(5) (2024).

144 89 Fed. Reg. 657 (2024).

145 16 C.F.R. § 463.6(a)(1) (2024).

146 89 Fed. Reg. 657 (2024).

147 *Id.* at 658.

148 *Id.*

149 *Id.*

150 16 C.F.R. § 463.6(b) (2024).

151 89 Fed. Reg. 656 (2024).

152 16 C.F.R. § 463.6(b) (2024).

153 16 C.F.R. § 463.7 (2024).

154 The FTC bases the language of this section on the Mortgage Assistance Relief Services Rule (Regulation O), and the language in the Rule is nearly identical to the language in Regulation O. 89 Fed. Reg. 659 (2024), 12 CFR 1015.8. This explains the inconsistent use of the terms "person" and "consumer" in the Rule's waiver section, as both of those terms are defined in Regulation O but are not defined in the Rule. Despite the inconsistent use of terms in this section of the Rule, it does not appear that the FTC intends to allow the Rule to be waived for commercial transactions, for example, or that the FTC's authority to enforce the Rule is broader with respect to this section (i.e., that the FTC could seek to enforce a violation of this provision against any "person" instead of against only a covered dealer). See 12 C.F.R. § 1015.2.

ACKNOWLEDGMENTS

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