

Protecting the Federal Trade Commission's CARS Rule

Erin Witte, CFA

Chuck Bell, Consumer Reports

Christine Hines, NACA

John Van Alst, NCLC

Kimberly Fountain, AFR

The FTC CARS Rule

Background

- Dodd Frank (2010) created FTC's APA rulemaking authority over car dealers.
- July 2022 original proposal (Motor Vehicle Dealers Rule), received 25k comments.
- December 2023 final rule – Combating Auto Retail Scams (CARS), with a few changes based on public comments.

Pricing transparency

Add-ons and junk fees

The FTC CARS Rule

Affirmative Requirements

- **Offering Price** (full cash price, including mandatory fees, minus govt taxes) [463.4\(a\)](#)
- **Disclosures about monthly price**
 - **Total of Payments** (instead of "you can get this car for \$350/mo.," must include "*and the total price with those payments will be \$25,000*") [463.4\(d\)](#)
 - **Effect on final contract** (when changing to \$325/mo instead of \$350, must include "*that means the contract will be longer.*" if that is the case) [463.4\(e\)](#)
 - **Add-ons not required (if true)** [463.4\(c\)](#)

Prohibited Conduct

- **Common misrepresentations** (including those against military servicemembers) [463.3](#)
- **Some junk fees** (dealers cannot charge consumers for add-ons that do not provide any benefit) [463.5\(a\)](#)
- **Hidden charges** (requires "express informed consent") [\(463.5\(c\)\)](#)

The FTC CARS Rule

Considerations

- The Rule does not provide a private cause of action for individuals, but some states may incorporate FTC Rules into their UDAP statutes.
- The Rule does not apply to the sale of RV's, off-road vehicles, motorcycles ([464.2\(e\)](#)).
- Without a Rule, the FTC cannot seek restitution/refunds in court. It has to use some other workaround, thanks to a 2019 SCOTUS ruling in *AMG Capital*.
- The Rule is not effective yet – it has been stayed due to litigation (Christine will cover this).

Benefits of the CARS Rule

Billions of dollars and multiple hours saved by consumers

Competition for honest dealers (many support the CARS Rule)

Authority for the FTC to obtain refunds for consumers

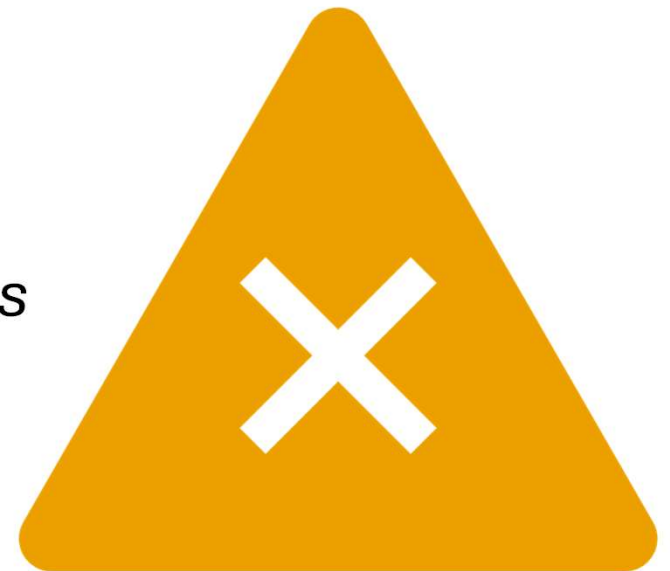
Ensures the FTC can do future rulemakings that regulate additional unfair and deceptive conduct by car dealers

Dealers Oppose.

NADA spent \$6.48M on 2023 lobbying.

NADA complains that the Rule:

- *Adds burdensome paperwork obligations for car dealers*
- *“Needlessly lengthen(s) the car sales process.”*
- *Bans conduct that is already illegal.*



FTC REDO Act (H.R. 7101, S.3014) **Threatens This & Future Rulemaking**

It would:

- Rescind the current rule
- Require studies, consumer testing, and a cost-benefit analysis before any future rulemaking
- Require ANPR process



Continued Industry Threats...

NADA & TADA v. FTC

(Jan. 4, 2024)

*NADA petitions Fifth
Circuit to vacate or
modify the CARS Rule*

FTC pauses effective date

(Anticipated)

Congressional Review Act (CRA) Resolution

*a tool that Congress may use
to overturn rules issued by
federal agencies.*

How can we protect the Rule?

- Sign on to the Letter to Congress Supporting the Rule
- Join Hill Meetings With Advocates
- Participate in Consumer Advocacy Week

How can we protect the Rule?

Sign on to the Letter to Congress Supporting the Rule

- We have drafted a short and simple letter to Congress in support of the rule.
- [Here is a link to the google form](#), and [here is a link to the letter](#).
- Sign-ons are due by Wednesday, April 3, 2024.
- We are soliciting sign-ons from national, state, and local advocacy organizations and non-profits, law firms representing consumers, government and academic entities.

How can we protect the Rule?

Join Hill Meetings With Advocates

- We are scheduling a series of ongoing meetings with target offices, especially Senate offices, to inform them about the rule, alert them to legislative efforts to undermine the rule, prepare them for industry arguments against the rule, and be ready to reach out to them as soon as a CRA effort is begun.
- If you are willing to meet with legislators from your state or have a close relationship with legislators please let us know by sending an email.

How can we protect the Rule?

Participate in Consumer Advocacy Week

- Consumer Advocacy Week 2024
 - Kick Off & Training Event: April 9 at 2pm ET
 - Meetings will occur April 15-19
 - FTC CARS Rule will be a particular area of focus
- Supporting Documents Available here: [Two-Pager](#), and [FAQ's/Resources](#).
- Register at [THIS LINK](#) by March 22, 2024.

Questions?