

# Auto Dealer Regulatory Update September 2024



## FTC CARS Rule: Dealer readiness as oral arguments near

Oral arguments in pending litigation against the FTC's proposed CARS Rule are scheduled for October. The legal challenge was brought by the National Auto Dealers Association and the Texas Auto Dealers Association and the rule is also coming under some congressional scrutiny.

A congressional committee passed a measure that would bar the FTC from implementing the rule in the coming fiscal year, but the provision has not seen further action and will likely get overshadowed in larger government funding debates.

As these efforts may not block implementation, familiarity with the rule and preparation are in order for dealerships. As a brief refresher, the rule outlines:

- 16 categories of "prohibited misrepresentations"
- "Clear and conspicuous" disclosure requirements
- Rules for "add-ons" and "express, informed consent" requirements
- A comprehensive two-year recordkeeping requirement

Many of the provisions are already prohibited under unfair, deceptive, and anti-competitive practices statutes, but the rule would create civil penalty exposure for dealers under which the FTC could levy fines in excess of \$50,000 per violation.

After the disposition of the litigation, and absent any congressional action, dealers could be faced with a compliance burden within months. That burden will be substantial, as it implicates marketing and communications with customers regarding pricing, financing terms, available rebates and incentives, and add-ons. Extensive training and documented practices will be required. Ahead of a final rule being issued, dealers should consider their own circumstances and what may be required to ensure compliant operations. The FTC guide linked below provides more details.

[FTC CARS Rule: Combating Auto Retail Scams – A Dealers Guide | Federal Trade Commission](#)

## Keep the FTC's Junk Fees rule on your radar

Dealers can't sleep on other activity at the FTC. Even if the CARS Rule does not get implemented, dealers could be subject to a separate FTC "Junk Fees" rule currently pending. While less intensive than the CARS Rule, this regulation is aimed at similar ends. It would require clear and conspicuous disclosure of a "total price" and prohibit "misleading fees" along with disclosure of the "nature and purpose" of any additional fee. As proposed, the rule would exempt dealers if the CARS Rule is in effect, but otherwise its requirements would also apply to dealers. The comment period for the rule closed earlier this year, and we await the FTC publishing a final rule in the coming months. More information can be found on the press release linked below.

[FTC Proposes Rule to Ban Junk Fees | Federal Trade Commission](#)

## FTC enforcement announcements

The agency also highlighted enforcement of some of their regulations with these announcements published over the summer:

[FTC Takes Action Against Auto Dealer Group Asbury Automotive for Discriminating Against Black and Latino Consumers and Charging for Unwanted Add-Ons](#)

[FTC, State of Arizona Take Action Against Coulter Motor Company for Deceptive Pricing and Discriminatory Practices](#)

[CarShield, Nationwide Seller of Vehicle Service Contracts, to Pay \\$10 Million to Resolve Federal Trade Commission Charges of Deceptive Advertising](#)

[FTC Takes Action Against Online Used Car Dealer Vroom for Deceiving Customers, Failing to Deliver on Time and Provide Required Disclosures](#)

## Dealer consumer data compliance under FTC Safeguards Rule

The June CDK cyberattack highlighted exposures for dealers and brought fresh focus to the updated FTC Safeguards Rule requiring dealers to meet certain obligations and procedures to protect consumer data. The FTC did accept a proposal by NADA and CDK to allow CDK to file a breach notification on behalf of dealers if one is required under the Safeguards Rule. There are other Safeguards compliance measures dealers want to be sure to cover, as well as possible state breach notification requirements. Zurich's SpearTip service recently provided insights on this matter.

[CDK Global Cyberattack, FTC Safeguards, and How SpearTip Can Help.](#)

## Mixed reviews for final EV tax credit rules

The U.S. Treasury Department issued final rules this summer regarding requirements for the EV tax credit changes passed in the Inflation Reduction Act. Automakers were generally pleased, but critics and lawmakers from China involved in the drafting suggested the administration was allowing too much leeway for what will be allowed under critical mineral and battery sourcing threshold requirements for the tax credits. The Treasury also reported that more than \$1 billion has been advanced to dealers under new rules that allow a car buyer to assign the EV tax credit to a dealer at the point of sale.

## 2025 "Tax Armageddon" debate

Next year is going to be a very big year for federal tax policy. Many provisions from the Tax Cuts and Jobs Act (TCJA) of 2017 are expiring at the end of 2025. The 2017 tax law was written to sunset lower individual tax rates and other provisions for budgetary reasons. Many business-related tax changes, like the lower 21 percent corporate tax rate, were made permanent. There will be enormous political pressure to extend middle class individual tax relief. The astronomical price tag for extending the expiring TCJA provisions is pegged in excess of \$4 trillion. Dealers that are organized as pass-through entities could face acute tax pressure with higher individual rates, and even C Corps could see an increased rate to try to offset extending individual tax relief. The November elections will inform procedural options and who will be among the principal negotiators next year.

## Zurich

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