NMADA Motor Vehicle Advertising Standards

New Mexico Automotive Dealers Association

“Advertising Compliance Guide”

New Mexico Automotive Dealers Association (NMADA)

The **NMADA Advertising Pre-Review Program** is a complimentary service available to all Members of NMADA. Radio, television, internet, and print mediums are included in this service. The advertising guidelines contained herein reflect a brief compilation of New Mexico and Federal regulations to assist Members in avoiding common practices construed as deceptive and misleading; therefore literal compliance with these guidelines does not provide absolute protection from all deceptive and misleading advertising practices. Thus NMADA offers a Pre-Review service to further assist Members with compliance.

You may EMAIL your ads to David Hubbard at David@nmada.org
Advertisements are reviewed and returned within 48 hours. Adobe PDF format is preferred for print ads. The generally accepted format for television is a script of the audio and video, and audio script for radio.

You are encouraged to have your general managers, sales managers, in-house advertising people, and your advertising agencies carefully review and become acquainted with the **NMADA Motor Vehicle Advertising Standards**. An electronic copy can be found on the NMADA website under *Services/Advertising Pre-Review*.

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TABLE OF CONTENTS

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NMADA Motor Vehicle Advertising Standards

These standards provide a basis for evaluating motor vehicle advertising. They reflect provisions of **New Mexico and Federal law**, **but do not necessarily cover every possible deceptive advertising practice**. *Therefore, it is not intended that literal compliance with these guidelines be absolute protection against liability for deceptive advertising*. **Dealers must review their advertising in light of the purpose of the standards.**

1. Purpose

1.1 The purpose of these standards is three-fold:

(A) To prevent deception of the consumer, which deception results in economic harm to the consumer;

(B) To provide uniform benchmarks for the automobile dealer to encourage prevention of deception and make evaluation of particular practices easier; and

(C) To serve as a summary reference guide for dealers and advertising mediums to facilitate compliance with Federal and State Motor Vehicle advertising regulations.

2. Advertising Defined

2.1 Any form of communication medium designed to reach the public is considered advertising and therefore must follow the standards. Examples of such communications are: portable marquee signage, banners in the dealership, window painting, promotional flyers in conjunction with other businesses, live remotes, Internet, etc.

3. Liability

3.1 Because advertisements represent the dealership, the dealer will be held accountable for all advertising violations regardless of who may actually write, typeset or print the advertisement. The dealer is ultimately responsible for insuring that all advertising is correct and does not deceive the public in anyway.

3.2 The Federal Trade Commission (FTC) has ruled that an advertising agency may be held additionally liable for violations which they knew, or should have known, were non-compliant**.**

4. Advertising Pre-Review

4.1 Advertisements submitted to New Mexico Automotive Dealers Association (NMADA) for review are requested to allow 48 hours for review. Since reviews are generally not of the final production, they shall not be construed as literal compliance with advertising regulations, nor as protection against liability for deceptive or misleading practices.

5. Vehicle Categories

5.1 Definitions. All vehicles may be classified as one of the following:

(A) "Used" means a vehicle for which the Manufacturer Certificate of Origin (MCO) or the Manufacturer Statement of Origin (MSO) has been surrendered to a registration authority, unless the certificate or statement has subsequently been returned, un-cancelled, to the dealer or a substitute certificate or statement has been issued to the dealer;

(B) "Demonstrator" means a vehicle which is not used but which has been place in demonstration or courtesy service regardless of the miles it has been driven; and

(C) "New" means a vehicle, which is neither used, nor a demonstrator.

6. Vehicle Descriptions

6.1 No dealer shall describe a vehicle as new when it is either used or a demonstrator, nor shall any dealer describe a vehicle as a demonstrator when it is used.

6.2 No dealer shall use any phrase containing the word "new" to describe a vehicle which is not new.

6.3 No dealer shall use any description which would lead a reasonable person to believe that a vehicle is new if the vehicle is not new, or a demonstrator if the vehicle is used.

6.4 If a dealer's advertisement of a used motor vehicle or a demonstrator represents directly or indirectly that the dealer obtained the vehicle from the manufacturer, the advertisement must disclose clearly and conspicuously the fact that the vehicle is used or a demonstrator.

6.5 The following are examples (without limitation) of implied representations that a dealer obtained a vehicle from the manufacturer:

(A) "Program Car"

(B) "Factory Program Car"

(C) "Factory Auction Car"

(D) "Special Purchase Car"

(E) "Special Factory Purchase".

6.6 A dealer may use a phrase, other than one defined in this section, as long as Sections 6.3 and 6.7 are not violated.

6.7 When advertising used vehicles the word "used" or "pre-owned" must be included in the text of the advertisement in a clear and conspicuous manner. Such words in slogans or logos describe the place of business, not necessarily the vehicles advertised, and do not meet the requirement.

6.8 Dealers may not advertise government vehicles, government seized vehicles, or similar terms describing former government vehicles in a manner that implies the dealer is acting as an agent of government for the sale of such vehicles, unless such is true. Federal and State laws require such vehicles to be disposed of by auction or public sale authorized by a government agency. Such vehicles procured by a dealer from a source other than direct from a government auction/public sale may advertise such vehicles for sale, but must disclose the procurement source in a clear and conspicuous manner.

6.9 It is an unfair and deceptive trade practice to advertise vehicles of a particular characteristic such as *"bank repos, lease returns, program cars, auction vehicles, etc.,"* unless such is true. Further, it is an unfair and deceptive trade practice to misrepresent source, sponsorship, or affiliation of such vehicles.

7. Spot Deliveries

7.1 If a dealer sells a new vehicle, for which, in a previous transaction with another buyer:

(A) The Manufactures Certificate of Origin MCO (MSO) has been endorsed to the buyer; and

(B) The vehicle has been delivered to the buyer, the dealer shall disclose to the subsequent buyer that the vehicle has been previously sold at retail. The disclosure shall be made in a conspicuous and easily understood manner. Before the buyer signs any document obligating him or her to purchase the vehicle, the disclosure shall be signed by the buyer acknowledging his receipt of the disclosure.

7.2 A dealer may advertise as new a vehicle which has been previously sold at retail and delivered to the buyer if the vehicle still meets the definition of new.

8. Distress Sales

8.1 Distress sale means you are going out of business. The Distress Sales Act lists phrases that can only be used if a dealer is having a distress sale. Particular phrases mentioned in this act are "fire sale," "smoke and water damage sale," "adjustment sale," "liquidation sale," "creditor's sale," "insolvent sale," "trustee sale," "bankrupt sale," "save us from bankruptcy sale," "insurance salvage sale," "receiver's sale," "loss of lease sale," "forced out of business sale," "removal sale," "change of ownership sale," or "new location sale". In other words, if a dealer is going to continue in business, these terms and terms of similar meaning may not be used.

9. Number One Claims

9.1 When advertising "number 1," "biggest," "number 1 in sales," "largest inventory," etc., dealers must disclose the basis for these claims. For example, "based upon New Mexico new car registrations for January, 2007" would support a "number 1 in sales" claim. The basis of such claims must be from an independent third party source not affiliated with the dealer in any manner.

10. Discounts

10.1 Manufacturers are required by federal law to label new automobiles with a suggested retail price, 15 USC 1232. Automobiles as defined by federal law include passenger cars and station wagons. Federal law does not require similar labeling for other vehicles.

10.2 Discount claims on new automobiles may be made in reference to manufacturer's suggested retail price or any other reference price as long as:

(A) The claim is not deceptive;

(B) The dollar value of the reference price meets any applicable requirements

such as Section 24 of these standards;

(C) The resulting price meets the requirements of these standards;

(D) The reference price is objectively verifiable using data not solely subject to dealer's control; and

(E) The dealer retains records that indicate the basis of the reference price for a period of not less than one year from the date of the advertisement.

10.3 It is deceptive for a dealer to raise any price of a new vehicle in order to increase or create a discount, savings, or rebate for the period of a sale, and then decrease the price after the sale.

10.4 If a dealer uses any price as the basis for a discount price, the dealer must clearly disclose which price is being discounted.

10.5 If a dealer uses a price greater than the manufacturer's suggested retail price as the basis for a discount price, he shall disclose that fact. He shall also disclose whether the discount price is above or below the manufacturer's suggested retail price and the amount by which it is above or below.

10.6 A discount claim cannot be solely within the dealer's control. It would not be allowed to add additional dealer profit of $1,000 and then claim a discount of $1,500. Adding up the suggested retail prices of accessories, whether manufacturers or after market, and then claiming the discount is allowed. However, the basis for the discount must be disclosed. For example, "discount includes savings from suggested retail price of items if purchased separately" takes care of the package savings problem. And, if the price discounted is over MSRP for the vehicle then that fact, and the amount by which it exceeds MSRP must be disclosed. For example, "price discounted is $1,500 over MSRP" would be adequate disclosure.

10.7 When advertising discounts on "used" vehicles, as defined in Section 5.1(A) hereinabove, a dealer may not use any term or price associated with a *New* or *Demonstrator* vehicle as the basis for a discount, i.e. MSRP, Original MSRP, Invoice, etc. Per FTC Sec. 233.1, a reference price for a discount claim must be a price at which the vehicle was openly and actively offered for sale for a reasonable period of time in the recent and regular course of business. The FTC further states such reference price may not be fictitious, artificial, or inflated for the purpose of offering a large reduction; and the "bargain" advertised price must represent a bona fide savings from a regular price.

10.8 When advertising a low or discounted monthly payment that will increase during the period of the contract, the dealer must disclose both the discounted payment and the increased payment together in a clear and conspicuous manner.

10.9 A dealer may not offer "cash back", "bonus cash", or terms of similar meaning that imply the consumer will receive cash from the dealer. A dealer may offer a discount against the purchase price. Such terms are deemed a *rebate*, and only manufacturers may offer a *rebate* (Sec. 18.5). Dealers may not match or augment a down payment (Sec. 27.2 & 27.3).

10.10 A Dealer may not compare the monthly, annual, or total cost of a lease with a purchase price and claim the difference as a discount or savings.

11. Invoice

11.1 The use of the term “invoice” or “invoice price” in advertising must be in reference to the manufacturer’s or distributor’s total invoice price on a vehicle without dealer added accessories and services and such advertisement shall clearly and conspicuously include one of the following disclosures:

(A) “The invoice may not represent actual dealer cost;” or

(B) “The factory invoice refers to the manufacturer’s or distributor’s total invoice price.”

12. Below Market Financing

12.1 If dealer participation in “buying down” an interest rate may affect the final price of the vehicle, that fact must be disclosed in the advertisement.

12.2 Advertisements that offer below market financing rates must clearly disclose all the terms which must be met in order to qualify for that advertised rate. Examples are large down payments, hidden finance charges, unusual terms of the loan or higher selling prices.

13. Credit

13.1 It is deceptive to advertise that credit applications will be approved, unless all limitations are disclosed such as Sec. 13.3. However, "all credit applications accepted" can be used with the disclaimer in close proximity that “acceptance does not mean credit approval.” This would help clear up the confusion that the public may have in not understanding the difference between an application being accepted and an application being approved.

13.2 It is deceptive for a dealer to advertise a specified finance rate and then have a customer sign a contract with a higher finance rate, unless the advertisement discloses the information specified in Section 20 for the loan program under which the low rate is offered and:

(A) The customer declines to participate in the program advertised;

(B) The customer is not financially eligible for that loan program; or

(C) The transaction is not eligible for the loan program.

13.3 Advertisements for credit availability shall disclose all limitations on that availability, and must disclose any unusual terms which must be met for the approval, i.e., down payments of over 25%, required co-signers or guarantors, cross-collateralization or any other requirement which is not usual and customary in financing transactions.

13.4 “No credit necessary” claims are fine if:

(A) No credit is necessary;

(B) Any limitations, for example, “six month employment history required”, are disclosed; and

(C) The claim is not written so as to include poor credit risks unless they are in fact included.

14. Disclosures

14.1 A dealer shall not obscure or make misleading any material fact in any advertisement or sales presentation by the use of layout, headlines, illustrations, footnotes, style, sound, length of time, lighting, color, or type size of an advertisement or any portion of an advertisement.

14.2 All disclosures or disclaimers in advertisements must be clear and conspicuous and in close proximity to the terms they modify.

14.3 Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Dealers shall not run advertising which misleads by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement. Also, dealers shall not use television advertisements with disclosures that are in such fine print, have lack of color contrast, or appear on the screen so briefly that they cannot be read.

14.4 It is deceptive to advertise in large bold print a particular statement, then in small mouse size type print and far away from the large statement make a disclaimer that takes away from the large statement.

14.5 The use of telephone numbers to disclaim "sales" advertising is prohibited by Regulation "M" of the Federal Reserve System. Refer to Section 21 for "lease" restrictions.

14.6 In accordance with New Mexico advertising requirements, all advertisements must include the sponsor (dealer name) in a clear and conspicuous manner.

14.7 When advertising multiple vehicles with a common trigger term(s) a *sample disclosure* is required to satisfy Federal and State laws. A complete and proper disclosure should include the following information: *"Example: 2003 Ford Focus $13,295, Stk. No. 1234, $0 down, $221.58 per mo., 60 mos. @ 0%APR, OAC, plus TT&L and Dealer Transfer Service Fee."*

14.8 New Mexico advertising regulations state that to "clearly and conspicuously disclose" means disclaimers must be a minimum type-size of at least ten (10) point type for a 14" x 23" document, and a proportionate type-size for larger documents.

14.9 Each disclosure in an advertisement must be prefaced by a unique reference mark (i.e. *, **, 1, 2, etc.), with a corresponding reference mark next to the term(s) they modify.

14.10 It is deceptive and misleading to use any symbol or artwork with a likeness to government seals or registered marks that may cause the likelihood of confusion or misunderstanding as to source, authorization, sponsorship, approval, affiliation, or certification by another (57-3B-14 NMSA 1978).

14.11 It is unlawful for a dealer to advertise or use manufacturer registered service or trademarks other than those expressly authorized by the dealer's Franchise Agreement without express written consent by the owner of the service or trademark.

15. Free

15.1 Dealers may not use the term "free," or words or phrases (express, silent, or implied) which convey similar meaning when offering a product or service conditioned upon purchase or lease; thus, if a consumer cannot walk away after accepting a dealer sponsored advertising promotional incentive (i.e. free TV, free vacation, free financing, drive free for a year, free oil changes, free extended service agreements, etc.) without entering a purchase or lease agreement, then the incentive cannot be advertised as “free,” or by similar meaning terms and phrases. Said restriction includes cooperative promotions by or between third parties (excluding manufacturers). However, a dealer may offer such product or service for free on condition of a test drive.

15.2 A dealer may offer a product or service at some reduced price ($1, 2-for-1, etc.) conditioned upon purchase or lease, provided there is no direct and immediate cost recovery, in whole or in part, from the consumer in a purchase transaction.

15.3 Manufacturers may offer product or service at "no additional cost" or similar terms (but not for free) on condition of purchase or lease, based upon the fact there are no negotiated aspects in a manufacturer-to-dealer transaction. Dealers may advertise such promotions with a conspicuous disclosure that the promotion is offered exclusively by the factory.

15.4 When advertising “buy any one of these fine vehicles and chose a 2nd one from our budget group”, remember that the 2nd vehicle cannot be free. Dealers must also clearly describe what vehicles may be selected from and that you are giving no warranties. Do not rely on the buyer’s guide to disclaim the warranty. The disclosure must appear in the advertisement and in a separate disclaimer describing the nature of the vehicle when closing the deal.

16. Games-of-Chance

16.1 Games-of-chance per FTC compliance, as a minimum, shall include:

1. “No purchase required” or “No purchase necessary”.
2. Odds of winning a prize.
3. Instructions on how to participate.
4. Costs or conditions to receive or redeem a prize, including tax liability, shipping and handling, transportation exclusions, miscellaneous fees, etc.

17. Trade-Ins

17.1 No guaranteed trade-in amount, range of amounts, percentage, or range of percentages shall be used in advertising.

17.2 No multiple, such as “double,” or other type of increased trade-in allowance shall be used in advertising.

18. Rebates

18.1 It is deceptive to advertise rebates if the dealer raises the price of the vehicle prior to a sale in order to compensate for the allowance of the rebate.

18.2 It is deceptive to advertise the existence of a rebate or a price that takes into account a rebate unless the advertisement discloses the existence, amount and source of the rebate. By advertising a rebate, you have disclosed the existence.

All that remains is the source and amount(s).

18.3 Dealers who advertise rebates shall have sufficient documentation to prove that the sale prices of vehicles sold in connection with such promotions have not been increased to compensate for the rebates.

18.4 It is deceptive to advertise as a rebate any price reduction which is not a rebate.

18.5 A "rebate" means a reduction in price of a vehicle created, at least in part, by a payment of money by a third party either to the dealer or the purchaser of the vehicle. A rebate is defined as a payment from a third party. That means that the manufacturer and finance companies can give rebates, but dealers cannot give a rebate. Dealers can give discounts.

18.6 When advertising rebates that have a range, it is necessary to disclose the lowest and highest of the rebates. For example, "Factory rebates from, $250 to $2,500".

18.7 When restrictions apply to rebates, such as "college graduate rebate" that do not apply to every college graduate in the state of New Mexico, simply disclose "some restrictions apply" or "see dealer for more information." Multiple manufacturer rebates (i.e. rebate stacking) that have qualification that are inconsistent or unlikely to be satisfied by most consumers should be avoided.

18.8 It is an unfair trade practice to advertise a rebate when in fact there is no such rebate.

19. Ranging Terms

19.1 When advertising a trigger term range for multiple vehicles such as "payments from $149 to $649, from 24 to 72 months, down payments from 10 to 25%," a sample disclosure is required for the lowest and highest term in the range. When advertising a range with a single trigger term such as "up to", a single sample disclosure is required. The term "as low as" and "starting at" should be avoided.

20. Trigger Terms

20.1 The Truth in Lending Act and accompanying regulations govern credit advertising. The following are trigger terms that require certain disclosures to be made in the advertisement, regardless of the medium be it print, television, radio or other:

(A) The amount or percentage of any down payment (expressed as either a percentage or dollar amount) including acquisition fees which are considered to be down payments;

(B) The number of payments;

(C) The amount of any payment (expressed either as a percentage or dollar amount);

(D) The amount of any finance charge; and

(E) The period of repayment (length of contract).

20.2 If any one of the triggering terms appear, the advertisement must disclose:

(A) The amount or percentage of the down payment;

(B) The terms of repayment; and

(C) The annual percentage rate. If the annual percentage rate may be increased after consummation of the credit transaction, such as an adjustable rate loan, that fact must be disclosed.

20.3 If an advertisement mentions the amount of any payment, expressed as a dollar amount, that payment must be based on a sale price no more than the price required to be used under Sec. 24.3.

20.4 Without proper disclosure it is deceptive and misleading to use advertising terms such as “Acquisition Fee,” “Transfer Fee,” “Assumption Fee,” etc., unless the consumer is in fact assuming an existing loan. Any such payment required at the inception of a transaction shall be construed as a *down payment* and stated as such in the disclosure which must appear in close proximity to the advertised term in accordance with Sections 14.7, 20.2, and 26.1.

20.5 Certain factory credit advertising promotions offered through dealers contain trigger terms without disclosures required by the Truth-in-Lending Act to allow for differing state disclosure regulations. For compliance with Federal and State regulations a sample disclosure is required per Sec. 14.7.

20.6 APR, when advertised alone, is not a trigger term. Thus, APR alone does not require a disclosure, even when ranged.

20.7 “Zero Down,” “No Down Payment,” and terms of similar meaning requiring no cash or cash equivalent at purchase inception are not trigger terms and require no disclosure. Further, there must be no cash or cash equivalent required at purchase inception, except as allowed by New Mexico law (tax, title, licensing, and dealer transfer service fee). Any other cash or cash equivalent required at purchase inception shall be construed as a down payment, thus a trigger term, and be conspicuously disclosed as such in accordance with Sections 14.7, 20.2, and 26.1.

21. Lease Advertising

21.1 The Truth in Lending Act and accompanying regulations regulate consumer leases because they represent an alternative to buying on credit. Also, unless certain information is provided, a consumer might easily confuse leasing with purchasing on credit.

21.2 If an advertisement promoting a “consumer lease” contains any of the following trigger terms, then four specific disclosures must also be included in the advertisement and in a particular format. The trigger terms are:

(A) The amount of any payment, or the total of payments; and

(B) A statement that any or no down payment, or other payment, is required at the beginning of the lease.

21.3 If any triggering term is used in a consumer lease advertisement, then the following four disclosures must also be included in that advertisement in a particular format:

(A) A statement that the transaction advertised is a lease in close proximity to the trigger term and in not less than one-half the type size as the trigger term. The FTC has interpreted "close proximity", when disclosing an advertisement is for a lease, means next to the trigger term.

(B) The total amount of any payment (such as security deposit or capitalized cost reduction) required at the beginning of the lease, (itemize all up front monies involved in contracting into a lease agreement and locate these facts in close proximity to the lease vehicle so they are prominently

displayed) or a statement that no such payment is required;

(C) The fact that a security deposit is or is not required; and

(D) The number and amounts of scheduled payments.

21.4 Consumer lease advertising on radio and television must also be in compliance with the required disclosures stated above with one additional option:

(A) State the transaction is a lease and the amount of any payment required at inception.

(B) On radio/television advertisements, include a referral to a toll-free telephone number that has been established to give verbal details regarding the lease or provide them in written form, if requested by the consumer. This toll-free telephone number shall be established not later than the date on which the advertisement including the referral is broadcast. The number shall be maintained for a period of not less than 10 days, beginning on the date of any such broadcast. The required disclosures must be provided to the consumer who calls such number.

(C) Or refer them to the print media advertisement that includes the required disclosures. The print advertisement must be in circulation during the period beginning 3 days before any such broadcast and ending 10 days after such broadcast. The name and dates of the publication used must be included in the radio/television advertisement. Following are examples of acceptable and non-acceptable lease advertisements:

21.5 It is deceptive and misleading to use purchase terms and phrases such as “pay only half of MSRP” to describe a “LEASE”, unless it is disclosed as a LEASE in a clear and conspicuous manner. And “LEASE” must be disclosed next to the terms or phrases in not less than one-half the type size

Lease Examples

*****Exhibit A**-Advertising violation (as determined by FTC). The problem is disclosures are made in mouse size type.

GO-IN-THE-SNOW
4-WHEEL DRIVE
$239 PER MONTH LEASE
OVER 80 IN STOCK

Lease payment based on 24 month closed end lease. First month lease payment, tax, title, license, security deposit and $2500 cap cost reduction due at lease inception. Total of payments $5,736 purchase option price of $21,196 at lease end. 12,000 miles per year allowance. 15 cents per mile over due at lease end.

*****Exhibit B**-Advertising violation (as determined by FTC). The problem is the amount due at inception is hidden in mouse size type.

4-WHEEL DRIVE
$389 PER MONTH/30 MONTHS
THE $0 DOWN LEASE

Subject to limited availability. Avail. Thru Jan 5, 1995 at participating dealers to approved lessees by ___ Finance Corp. Advertised rate based on 30 mo. Closed-end lease for 1995 LX Sedan Due at lease signing are 1st mo.'s lease payment, refundable security dep. Equal to 1 mo.'s payment rounded to the next highest $25 increment (except where no security deposit is collected) / applicable tax, title and license. Total monthly payments $6,870 for the LX Sedan I, $8,670 for the LX Sedan II.

*****Exhibit C**-Required and correct advertising elements. This are readable and understandable disclosures in larger size type.

GO-IN-THE-SNOW
4-WHEEL DRIVE
$239 PER MONTH LEASE

24 month lease. First month payment, tax, title and license, $400 security deposit and $2500 capitalized cost reduction due at lease inception.

OVER 80 IN STOCK

*****Exhibit D**-Advertising disclosure (conforms to FTC requirements). This transaction is a lease. The number and amount of payments are disclosed. The required security deposit and amount due at signing are clearly disclosed and prominently displayed equal to the trigger term type size.

$389 month/30 month lease/$0 down payment

$450 Lease acquisition fee
+500 Security Deposit
$950 Due at lease signing

22. Special Buys/Factory Programs

22.1 Special factory programs, such as Smart Buys, Gold Key Programs, etc., are all credit transactions, therefore all the normal credit disclosures apply. However, this type of program usually has a large final payment, or a large down payment, or the consumer can walk away for a disposal fee and not own the vehicle. With this in mind, another disclosure is required with this type of advertising. One of the options that the consumer has at the end of the term must be printed, in not less than one-half the type size of the trigger term and next to the trigger term. Examples of reasonable disclosures are "$17,923 final payment", "walk away after 24 months, $250 disposal fee" or "refinance balance at 9.1%". If there is a disposal fee it must always be included with the walk away term.

23. Non-Standard Terms

23.1 Increasingly complicated financing arrangements that require special treatment are becoming more common in the marketplace. Among these arrangements are variable payment plans, balloon payments, and very large down payments. The disclosure provisions derived from Regulations M and Z do not necessarily inform the consumer adequately and more detailed and specific provisions are necessary.

(A) In any advertisement offering financing or leasing terms to the public, any non-standard term shall be disclosed next to the trigger term in not less than one-half the type size of the trigger term; and in electronic mediums the disclosure shall be revealed in the same manner, length of time, and decibel level as the trigger term. If there is no triggering term, then no disclosure of the non-standard term is required. Example: “$345/mo. Walk away for $250.”

(B) Acceptable disclosures of non-standard terms (the layout type disclosure) available lease (if it is a lease) or any one of the options if there are multiple options. For example “walk away for $250” is acceptable. The naked statement “disposal fee $250” is not acceptable.

(C) As used in this section, “non-standard term” means;

1. Any monthly or final payment which exceeds the initial monthly payment by more than twenty percent of the initial monthly payment; or
2. Any down payment or capital cost reductions, including any trade allowance, which exceeds twenty-five percent of the purchase price of the vehicle, whether down payment or reduction is expressed as a percentage or amount.

24. Price Advertising

24.1 It is deceptive for a dealer to sell a vehicle to a customer for more than the advertised price.

24.2 Advertised vehicles must be sold at or below the advertised price regardless of whether the advertised price has been actually communicated to the purchaser prior to the sale; this provision does not prevent dealers from requiring customers to present a coupon or copy of the advertisement to obtain the price; and the

advertisement clearly and conspicuously discloses that a coupon or copy of the advertisement must be presented.

24.3 The price of a motor vehicle, when advertised by a dealer, must be the full cash price for which the dealer will sell the vehicle. The only charges that may be excluded from the advertised price are:

(A) Federal and state taxes;
(B) License;
(C) Vehicle registration; and
(D) Dealer transfer service fees.

24.4 A qualification may not be used when advertising the price of a vehicle such as "with trade," "with acceptable trade," "with dealer-arranged financing" or "with down payment."

24.5 If a price advertisement discloses a rebate, cash back, discount savings claim, or other incentive, the full cash price of the vehicle must be disclosed as well as the price of the vehicle after deducting the incentive.

24.6 The cost of additional options or services requested by the purchaser may be added at the time of sale to the purchase price; provided that the failure to include the price of standard or optional equipment with which all cars sold by the dealer are minimally equipped in the advertised price is deceptive.

24.7 An illustration of a motor vehicle used in a price advertisement must be that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available, then the dealer must clearly and conspicuously disclose that the illustration is not the vehicle being advertised. Illustrations of other than the actual vehicle must, as a minimum, be of the same make and body style.

24.8 Competitor price comparisons may not be used in advertising unless a dealer has documented evidence to support such claim.

25. Availability

25.1 When a dealer advertises a specific type of vehicle for sale that is not readily available, it is deceptive to fail to disclose the vehicle's lack of availability.

25.2 It is deceptive for a dealer to advise prospective customers that an advertised vehicle is available when the vehicle is not available for sale, or that an advertised vehicle is not available for sale when the vehicle is indeed available for sale.

25.3 The dealer will provide a sufficient quantity of the advertised product to meet reasonably expected demand, if not dealer will provide the quantity is limited. Limited quantity will not be listed when in fact the quantity is not limited. If the quantity is limited it will be disclosed how many vehicles are available at the advertised price and their stock numbers.

26. Stock Numbers

26.1 When a dealer advertises a particular vehicle or type of vehicle for sale at a special price or terms, the advertisement should disclose the stock number(s) of those vehicles in stock for sale at that price.

27. Down Payment

27.1 It is deceptive for a dealer to advertise that no down payment is required in

connection with the purchase of a vehicle when a down payment or trade-in is in fact required. If only a trade-in is required a dealer may advertise that fact.

27.2 No dealer shall offer to match or augment a down payment unless the money to provide the match or augmentation comes from a third party, including, but not limited to, a manufacturer, an advertising association or a financing source.

27.3 No dealer shall offer to match or augment any funds required at the closing of a lease transaction, or any portion, segment or component of such funds, unless the money to provide the match or augmentation comes from a third party, including, but not limited to, a manufacturer, an advertising association or a financing source.

27.4 When offering dealer incentives such as "vouchers", "coupons", "gift certificates", "matching tax refunds", or similar terms, they cannot be used to match, augment, or guarantee any amount used for a down payment or trade-in; therefore they must clearly and conspicuously be stated as a discount from a purchase price.

28. Contract Add-Ons

28.1 It is deceptive for a dealer to negotiate the terms of a sale and then add the cost of such items as extended warranty, credit life, dealer preparation, undercoating, etc., to the contract without the customer's knowledge and consent.

28.2 It is deceptive for a dealer to use "documentary fee" or other similar term for any charges other than those actually required by law for processing of documents.

28.3 It is deceptive for a dealer to negotiate the terms of a sale and then add the cost of "comptroller inventory adjustment," "floor plan, handling, overhead and advertising," or any other charges, however denominated, that represent additional dealer profit, are part of the overhead expenses of running a dealership, are necessary incidents of the sale of a vehicle, do not represent payment for a bona fide product or service or are fictitious.

29. Service Contracts

29.1 It is deceptive to misrepresent or fail to disclose the terms or conditions of an extended service contract.

29.2 If a dealer is advertising a "warranty" on the vehicles sold, then the dealer must be prepared to purchase back the vehicle after several attempts to repair it has not been successful. Any other arrangement is a service contract, not a warranty and may not be advertised as a warranty.

30. Initials and Abbreviations

30.1 All initials or abbreviations used by the dealer in the advertisement of a motor vehicle, including the window sticker and supplementary sticker, must be clearly defined in the advertisement or window sticker; provided that abbreviations may be used for such options and features as air conditioning, power steering and power brakes in classified and similar advertisements if such abbreviations are commonly understood by consumers.

30.2 Abbreviations have to be understandable by the general public. In particular "CEL" (closed end lease) is not acceptable. As a rule of thumb, abbreviations describing equipment, A/C, PW/PL, 4WD, etc., are acceptable, but abbreviations dealing with financing or structuring the deal are not. WAC and OAC are acceptable as they are in such wide usage in the industry. Everything else should be spelled out.

31. Supplemental/Addendum Pricing

31.1 When a dealer is selling a vehicle for which a federal Monroney window sticker is required pursuant to 15 USC 1232, it is deceptive to charge or attempt to charge a customer more than the manufacturer's suggested retail price unless the dealer's asking price or supplemental price is clearly and conspicuously disclosed on a supplemental sticker adjacent to the Monroney sticker.

31.2 It is deceptive for a dealer to misrepresent the reasons for additional charges listed on a supplemental sticker.

31.3 It is deceptive for a dealer to list on a supplemental sticker a charge which:

(A) The dealer did not incur;

(B) Is otherwise accounted for on the Monroney sticker; or

(C) Is otherwise reimbursed.

31.4 It is deceptive for a dealer to represent, by a sticker or other means, that options have been added to a vehicle before they have been added.

32. Complaint Procedures

Advertising complaints should be submitted to NMADA in accordance with the following procedures.

32.1 (A) Electronic Medium Complaints accompanied by electronic copy must include:

1. Source identity of the advertising medium.
2. Date and time the original ad was copied
3. Narrative of complaint citing specific violations
4. Electronic copy reproduced in a format compatible with NMADA equipment.

(B) Complaints without electronic copy must include:

1. Name of dealership the complaint is filed against.
2. Source identity of the advertising medium.
3. Date and time the advertisement was heard and/or viewed.
4. Narrative of complaint citing specific violations.

(C) The Dealer Advertising Review Committee reserves the right to request electronic copies from member dealers to review complaint allegations. Such copy must be reproduced at dealer expense in a format compatible with NMADA equipment within five (5) days after receipt of request.

32.2 Print Medium Complaints

(A) Print medium complaints must include:

1. Original or legible copy of the advertisement which reveals the source, date, and page number (if applicable)
2. Narrative of the complaint citing specific violations.

33. Complaint Appeal Process

33.1 Advertising Complaint Appeals must be submitted in writing in accordance with the following procedures:

(A) The Board shall appoint as Umpire two persons who are retired jurists or attorneys with substantial standing, respect and prestige in the community. One of the persons shall be the primary Umpire and the second shall be available in cases of conflict of interest or unavailability. The Umpire shall determine all questions of conflict.

(B) The Umpire shall consider all fine recommendations from the Committee. The Umpire may accept the recommendation, reject it, or modify it in whatever manner he or she deems appropriate, including changing the fine to a Directive or Private Warning Letter. No fine imposed by the Umpire shall be greater than the maximum fine.

(C) The Umpire shall also consider any appeal from any action other than a fine recommendation if the appeal is taken by an interested party, other than the dealer. The party may take the appeal by filing it with the Chairperson of the Committee within ten (10) days of receiving the Committee's decision. On an appeal, the Umpire may impose any sanction the Committee could impose or can impose a fine up to the maximum fine.

(D) The Umpire may decide matters brought pursuant to B. or C. above either on the written record or, if the Umpire deems appropriate, after hearing. If a hearing is held, it shall be subject to the same notice requirements as a Committee hearing. The Umpire shall dispose of all matters within fifteen (15) days unless the Umpire determines that fairness to the parties requires a longer period.

(E) Any fine imposed shall be paid to the Association within fifteen (15) days of imposition. As a condition of continued Association membership, dealers agree to pay any fine imposed.

(F) All decisions of the Umpire imposing a sanction or fine, other than a Private Warning Letter, shall be made available by the Association to the membership of the Association and the general public.

34. Punitive Standards

34.1 The Dealer Advertising Review Committee will review advertising complaints for violations of NMADA Motor Vehicle Advertising Standards and assess appropriate sanctions per NMADA Motor Vehicle Advertising Standards Enforcement Provisions.

34.2 Sanction options available to the Committee by level of sanction are: 1) Dismissal, 2) Private Warning Letter, 3) Directive to Dealer, or 4) Fine. The Committee reserves the right to review and/or waive fines in accordance with Enforcement Provisions.

34.3 Re-viewable categories to determine the level of sanction are; severity of complaint, compliance after notice of complaint, number of complaints/violations within the previous twelve (12) month period, and repeat complaints/violations within the previous twelve (12) month period.

34.4 Minimum fines for separate and/or different violations may be assessed as

follows:

(A) 2nd Directive within twelve (12) months $ 100

(B) 2nd Fine within twelve (12) months $ 500

(C) 3rd Fine within twelve (12) months $ 2,500

The maximum fine for a single violation within the proceeding twelve (12) month period shall be the cost of the advertisement in question or $1,000, whichever is greater.

34.5 All Fines are due and payable to NMADA under separate cover within fifteen (15) days after receipt of notice by the Committee.

34.6 Failure to comply with decisions of the Committee, non-payment of fines, or cases involving more than three (3) fines, may result in such cases being referred to the NMADA Board of Directors for further review and action.