



## DELIVERY AND HANDLING (D&H): COLORADO COMPLIANCE GUIDANCE

### Background / Overview

Dealer fees (most commonly referred to as “Delivery and Handling” fees) are permitted in Colorado--absent any specific prohibition. While such dealer fees are not addressed *specifically* in statute or regulation, they are subject to disclosure requirements, the state Uniform Consumer Credit Code, state advertising regulations, and a typical state Deceptive Trade Practices Act.

### “Advertisement” is Extremely Broad

Colorado advertising regulations define an “advertisement” very broadly. The definition includes all Internet postings (dealer web site, Craigslist, Autotrader, Facebook, YouTube, etc.)—and includes any sign or display not mandated by federal law.

*C.R.S. (Colorado Revised Statutes) 12-6-102(1.5).* Means any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, televisions or public address system, in direct mail literature or other printed material, on any interior or exterior sign or display, in any window display, on a **computer display**, or in any point-of-transaction literature or price tag that is delivered or made available to a customer or prospective customer in any manner whatsoever: *except* that such term does not include materials required to be displayed by federal or state law.

*Regulation 12-6-102 (1.5).* The term, “computer display,” means any electronic device capable of presenting a commercial message

### Disclosure: Attorney General’s D&H Assurance of Discontinuance ("AOD")

The most specific direction on disclosure of D&H fees is based on a 1979 Assurance of Discontinuance ("AOD") with the Colorado Attorney General. This guidance was subsequently re-affirmed with some additional clarifications by the A.G. in 2007 and 2008. Part of that guidance states: “*Our intent in the AOD was to insure that so-called “delivery and handling” charges be **fully disclosed** to the consumer as involving additional dealer costs and profits.*”

While the Attorney General AOD is not binding law, it provides a safe harbor from actions by the AG’s office and *may* provide some defense to private lawsuits. Dealers should be aware that litigation has been filed in the past against Colorado dealers based on language referring to “preparing documents” or “documentary fees” alleging the unauthorized practice of law; for that reason these terms should be avoided.

The AOD defines “D&H” as follows:

“D&H shall mean charges for delivery, handling, dealer preparation, paperwork, documentary fees, get-ready charges and all similar charges (*excluding* any charges, fees or taxes required by any government agencies, such as state inspection and temporary registration costs) involved in inspecting, cleaning and adjusting motor vehicles for delivery to retail customers.”

Based on this definition, it is best to ensure that any other government-required charges, fees or taxes that are listed by name as additional fees in an ad do not conflict with this definition.

<p><b>DELIVERY AND HANDLING CHARGES</b></p> <p><b>To the negotiated price of each vehicle sold, there will be added the sum of \$_____ for costs and additional profit to the seller/dealer</b></p>
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There are a few disclosure alternatives offered under the safe harbor of the AOD. However, the recommended and most practical option for most dealers is the following:

1. **Post signs** within the showroom stating that delivery and handling (or whatever term the dealership utilizes, ensuring the term does not refer to ‘document preparation’ or ‘documentary fees’ in any way), represents costs and additional profit to the dealer. Required language:

TO THE NEGOTIATED PRICE OF EACH VEHICLE SOLD, THERE WILL BE ADDED THE SUM OF \$\_\_\_\_\_ FOR COSTS AND ADDITIONAL PROFIT TO THE SELLER/DEALER

- Signs must be posted in ***prominent*** locations throughout the dealership
- It is advisable to also post signs in the F&I office and any location where customers will sign final contracts. *See sample attachment sign.*

2. **Disclose the fee in all contracts** (offer to purchase, purchase agreement, buyer’s order, sale contract, etc.) in a clear and conspicuous manner (asterisk is allowed) and the language:

“THIS CHARGE REPRESENTS COSTS AND ADDITIONAL PROFIT TO THE DEALER”

### **Advertised Prices: D&H MUST Be Included**

Dealer Board advertising rules require as follows:

**Rule 13.** Advertising the **price** of a vehicle without including **all costs** to the purchaser at the time of delivery, *except* sales tax, finance charges, cost of emissions test, other governmental fees or taxes, and transportation costs, incurred after sale, to deliver the vehicle to the purchaser at the purchaser’s request.

**Rule 5.** Advertising in such a manner which utilizes an **asterisk** or other reference symbols to contradict or **materially change** the meaning of any advertising statements.

### **Taken together, these rules mean the following:**

- Because D&H is ***not*** included in the listed exceptions above, and because adding a fee to the most prominent price in the ad would contradict the meaning to most consumers, D&H must be included in all ads / postings **as part of the advertised price.**
- A ‘summation’ indicating the vehicle sale price, plus D&H, to reach a total price is allowable, as long as the bottom-line total price is equally as prominent as the price before D&H. [This may also help ensure consumers know to compare and ask about similar fees elsewhere.]
- Nothing prohibits a disclaimer, footnote, or pop-up or other notation that makes it clear to the consumer that D&H **is included** in the prices listed. In the interest of full disclosure to meet guidance at both the federal and state levels, this is a recommended best-practice.
- Each advertised total price must be consistent/the same across mediums for a specific vehicle.

The following ***examples*** illustrate this:

1. The following footnote / disclaimer on a dealer web site is **NOT COMPLIANT:**

\*\*\* Tax, title, license and ~~dealer fees~~ (unless itemized above) are extra.

2. The following Internet ad on a dealer web site would be in violation is **NOT COMPLIANT**:

**MSRP \$55,010**  
**Discount \$10,000**  
**Internet Special \$45,010**

Color: White Pla  
 Coat  
 Interior: Black  
 Stock#: 4T994  
 Engine: 3.5L V6  
 VIN: 1FTEW1E

**Vehicle Comments**  
 45010.00 + 599.50 D&H = 45609.50F-150 LARIAT IS WELL EQUIPPED AND READY FOR YOUR ATTENTION... THE LARIAT WAS BUILT TO CARRY YOU DOWN THE HIGHWA...  
 Click for More  
 Be the first of your friends to like this.

3. The ad below is *misleading* – it is unclear if the “Internet Price” listed includes D&H or not (the “+” seems to indicate it will be added). If added onto the \$65,930 at the time of sale, this would be a rule violation. Without the total price line, the consumer may be confused and assume the fee is in addition to the “Internet Price” and may go elsewhere. This ad is **NOT COMPLIANT**:

**2015 Ford SUPER DUTY F-350 SRW 5A** Compare



Body Style: Chassis Cab      Ext. Color: White Platinum  
 Model Code: W3B              Metallic Tri-Coat  
 Engine: Diesel 8 Cylinder Engine      Int. Color: Adobe  
 6.7L                                  MPG #:   
 Transmission: Automatic              Located:   
 VIN#: 1FT8W3BT8FEA11396  
 Stock#: 15851  
 Dealership:

**MSRP: \$66,430**  
**YOU SAVE: \$500**  
 Internet Price: \$65,930  
 Delivery & handling: +\$299.50  
[View Vehicle Details](#)

  


4. An example of using a summation concept of A + B = C is below – this **IS COMPLIANT** as long as the overall total price is displayed at least as prominently as the price before D&H:

YEAR	MODEL	MPG	PRICE
2008	Hyundai Accent 3dr HB Man GS	27 / 32 *	Sale Price: \$4,995 D&H: \$489 <b>Total: \$5,484</b>
STOCK #	76927	ENGINE	TRANS
VIN	KMHCM36C78U057123		AUTOMATIC
COLOR	BLUE	DRIVE	FWD
MILEAGE	126,495		
ENGINE	4, 1.6L,		
 12 PHOTOS  NOTES		<a href="#">COMPARE</a>    ADD	

 Payment Calculator

5. The following footnote / disclaimer on a dealer web site **IS COMPLIANT**:

All prices exclude tax, tags, title. Prices include delivery and handling fee of \$499

## **Additional Clarifications**

**Negotiations below the advertised price:** Dealer Board public discussions have indicated that if a price is negotiated below the ad price, D&H can only be added if the final price does not exceed the ad price. [*See further guidance on uniformity below that should also be considered*]

**“Dealer installed” items:** The most prominent advertised price should also include the cost of any additional equipment or add-ons that are not ‘optional.’ Such items that will be included in the final price cannot be added on top of an advertised price in a footnote, disclaimer, or later in the buying process.

### **Leases:**

*NOTE: This is an area the Motor Vehicle Dealer Board needs to further discuss and issue more guidance. Until further clarification is issued, state enforcement will focus on purchases.*

Leases are generally treated differently as an ‘advertised price’ is typically not part of the advertisement, but a monthly payment is. The Federal Consumer Leasing Act and its implementing Regulation M ensure that lease terms are disclosed to consumers in a meaningful way so they are understood. Under Reg. M, those trigger terms are the (1) amount of any payment or (2) a statement of any capitalized cost reduction or other payment or even that no payment is required (for example, \$0 down). If those trigger terms are present in an ad, the following must be disclosed:

- That the transaction advertised is a lease
- The amount due prior to or at the lease signing (“consummation”) or by delivery (if delivery occurs after consummation)
- The number, amounts and due dates or periods of scheduled payments under the lease (for example, \$425 per month for 36 months)
- A statement of whether or not a security deposit is required

In lease ads, it may be permissible to include D&H in the detailed explanation along with the items required to be disclosed under Regulation M as long as all other requirements are met.

### **MSRP**

*NOTE: This is an area the Dealer Board needs to further discuss. At present, the Division generally agrees with this; enforcement will focus on other areas until further clarification.*

Generally, an MSRP included in an advertisement or on a ‘configuration’ site for new vehicles where a customer selects various options to obtain an MSRP on a configured vehicle (that may or may not be in the dealer’s inventory) is not considered an ‘advertised price’. Most often, an advertised price is listed in conjunction with the MSRP so there is no question that the MSRP is simply a data-point. On occasion, however, there may be times when the MSRP is being utilized without any other price in a way that it is serving as an advertised price on a specific vehicle. Especially in the scenario when the vehicle is likely to sell at or above MSRP, the MSRP *could* be considered an ‘advertised price.’ *This will depend upon the circumstances.*

### **Apply Uniformly to Cash & Credit Customers / UCCC**

Dealers charging any additional fee must ensure practices cannot lead to an allegation that cash and credit customers were treated differently. The Colorado Uniform Consumer Credit Code (UCCC) adopts provisions of Federal Regulation Z to require that any "additional charges" must be charged on both credit and cash transactions to avoid charges being characterized as "finance charges." [12 C.F.R. Sec. 226.4]. Official Staff Interpretations note the following:

#### **Supplement I to Part 226, Section 226.4- Finance Charge, 4(a) Definition**

1. *Charges in comparable cash transactions.* Charges imposed **uniformly** in cash and credit transactions are not finance charges. (*emphasis added*).

### **Uniformity to Prevent Discrimination Lawsuits**

There is always the potential for a lawsuit under the federal Robinson Patman Act (which prohibits discriminatory pricing) when a dealership charges a different fee to certain customers. For the compliance requirements and lawsuit risks noted above, dealers are best advised to charge a uniform price for D&H on ALL transactions (special programs, lease-buy-outs, etc.).

### **Taxability**

Delivery & Handling fees *are generally taxable* in Colorado. [This could vary for some home rule jurisdictions, but most tax since the state does]. *To View the state publication, DR 0099, Sales and Use Tax General Information and Reference Guide* (see page 2, "Services").

[Click Here . . .](#)

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### **Additional Resources / FTC Guidance**

*A Dealer Guide to Federal Advertising Requirements, Jan, 2015*, (updated with detailed guidance based on recent FTC enforcement actions)

*The technique of "drip pricing," which involves advertising only a part of a product's price, with other charges being revealed to the consumer later in the buying process, should be avoided. The total price a consumer will be expected to pay for a product or service should be advertised. Regarding vehicles, the advertised price generally should be that amount a consumer would be expected to pay to purchase the identified vehicle as equipped, excluding government-imposed fees and taxes. **Documentation fees** are generally not government-imposed fees. Many states have statutory or other provisions specifically addressing the disclosure of documentation fees.*

*The Economics of Drip Pricing*, Workshop alert, May, 21, 2012; *FTC Warns Hotel Operators that Price Quotes that Exclude . . . Mandatory Surcharges May Be Deceptive*, Nov. 28, 2012.

The FTC held a “workshop” with various experts and invited consumers to share their stories related to ‘drip pricing.’ About six months later, warning letters were issued to 22 hotel operators. The FTC specifically called out the auto industry:

***Drip pricing is a pricing technique in which firms advertise only part of a product’s price and reveal other charges later as the customer goes through the buying process. The additional charges can be mandatory charges, such as hotel resort fees, or fees for optional upgrades and add-ons. Drip pricing is used by many types of firms, including internet sellers, automobile dealers, financial institutions, and rental car companies.***

.com Disclosures: How to Make Effective Disclosures in Digital Advertising (March, 2013), see page 1. FTC Guide [Click Here For Guide](#)

*Moreover, because consumers should not have to click on hyperlinks to understand the full amount they will pay, all cost information — including any such additional fees — should be presented to them clearly and conspicuously prior to purchase”*

Auto Industry Division, Colorado Department of Revenue  
[www.colorado.gov/enforcement/aid](http://www.colorado.gov/enforcement/aid)

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#### **LEGAL DISCLAIMER**

***CIADA is not authorized to give legal advice, and this guidance is not intended as legal advice. The material contained in this document is intended to provide general information and summaries of statutes and regulations—as well as clarifications regarding current enforcement as applied to specific examples. CIADA makes no representation or warranty as to the applicability of any of the above in specific advertisements. There is no substitute for independent legal representation on the topics covered, and dealers should consult legal counsel on the specifics of any laws or regulations to ensure proper compliance.***

***Motor Vehicle Dealer Board review pending.*** The Dealer Board will review this guidance for any points of change or for more examples that may help clarify and to generally affirm this industry guidance as reflective of their views regarding enforcement. At present, this information represents the best summary of how these provisions are currently being enforced.