

What Does the New Administration Mean to Car Dealers?

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What Does the New Federal Administration Mean to Dealers?

- Regulations: A New Era? But don't expect miracles or speed
- Enforcement
- Fairness to Businesses -- but what about import restrictions and taxes for car dealers?
- Health Care reform?
- Tax Relief?

Enforcement Issues

- FTC
- Dodd-Frank and CFPB
- IRS
- NHTSA
- DOL and NLRB



FTC

- Invigorated and funded specifically to oversee car dealer issues by the Dodd Frank Act
- Hot buttons
 - Advertising
 - Spot delivery
 - Sales and F&I tactics
 - Consumer privacy

FTC

The Agency Bares its Teeth

- A consent order entered by the FTC in March 2017 against a CA new car dealer group shows FTC aggressiveness.
- Federal court complaint alleging yo yo sales, misrepresenting vehicles and terms, false testimonials of dealer performance, false advertising
- \$3.6 million payment and crushing oversight and monitoring for 20 years

Revised FTC Used Car Rule is in Effect

- Published November 18, 2016
- Went into Effect January 27, 2017
- Does not change requirements to post Buyers Guides on all used vehicles for retail sale
- Changes the form itself
- There are two options for compliance until January 27, 2018
- NADA just issued its guide

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE _____ MODEL _____ YEAR _____ VEHICLE IDENTIFICATION NUMBER (VIN) _____

WARRANTIES FOR THIS VEHICLE:

☐

AS IS - NO DEALER WARRANTY

THE DEALER DOES NOT PROVIDE A WARRANTY FOR ANY REPAIRS AFTER SALE.

☐

DEALER WARRANTY

- ☐ FULL WARRANTY.
- ☐ LIMITED WARRANTY. The dealer will pay _____% of the labor and _____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED:

DURATION:

NON-DEALER WARRANTIES FOR THIS VEHICLE:

- ☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on some components of the vehicle.
- ☐ MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.
- ☐ OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

- ☐ SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

ASK THE DEALER IF YOUR MECHANIC CAN INSPECT THE VEHICLE ON OR OFF THE LOT.

OBTAIN A VEHICLE HISTORY REPORT AND CHECK FOR OPEN SAFETY RECALLS. For information on how to obtain a vehicle history report, visit ftc.gov/usedcars. To check for open safety recalls, visit safercar.gov. You will need the vehicle identification number (VIN) shown above to make the best use of the resources on these sites.

SEE OTHER SIDE for important additional information, including a list of major defects that may occur in used motor vehicles.

Si el concesionario gestiona la venta en español, pídale una copia de la Guía del Comprador en español.

Here is a list of some major defects that may occur in used vehicles.

Frame & Body

Frame-cracks, corrective welds, or rusted through
Dog tracks---bent or twisted frame

Engine

Oil leakage, excluding normal seepage
Cracked block or head
Belts missing or inoperable
Knocks or misses related to camshaft
Lifters and push rods
Abnormal exhaust discharge

Transmission & Drive Shaft

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged case which is visible
Abnormal noise or vibration caused by faulty transmission or drive shaft
Improper shifting or functioning in any gear
Manual clutch slips or chatters

Differential

Improper fluid level or leakage, excluding normal seepage
Cracked or damaged housing which is visible
Abnormal noise or vibration caused by faulty differential

Cooling System

Leakage including radiator
Improperly functioning water pump

Electrical System

Battery leakage
Improperly functioning alternator, generator, battery, or starter

Fuel System

Visible leakage

Inoperable Accessories

Gauges or warning devices
Air conditioner
Heater & Defroster

Brake System

Failure warning light broken
Pedal not firm under pressure (DOT spec.)
Not enough pedal reserve (DOT spec.)
Does not stop vehicle in straight line (DOT spec.)
Hoses damaged
Drum or rotor too thin (Mfr. Specs)
Lining or pad thickness less than 1/32 inch
Power unit not operating or leaking
Structural or mechanical parts damaged

Air Bags

Steering System

Too much free play at steering wheel (DOT specs.)
Free play in linkage more than 1/4 inch
Steering gear binds or jams
Front wheels aligned improperly (DOT specs.)
Power unit belts cracked or slipping
Power unit fluid level improper

Suspension System

Ball joint seals damaged
Structural parts bent or damaged
Stabilizer bar disconnected
Spring broken
Shock absorber mounting loose
Rubber bushings damaged or missing
Radius rod damaged or missing
Shock absorber leaking or functioning improperly

Tires

Tread depth less than 2/32 inch
Sizes mismatched
Visible damage

Wheels

Visible cracks, damage or repairs
Mounting bolts loose or missing

Exhaust System

Leakage
Catalytic Converter

DEALER NAME

ADDRESS

TELEPHONE

EMAIL

FOR COMPLAINTS AFTER SALE, CONTACT:

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (16 C.F.R. 455).

Option 1

- You may work through “remaining stock” of the former Buyers Guide forms until January 27, 2018
- However, that does not mean you have no new obligations
- For vehicles where “manufacturer’s warranty still applies” or there is a manufacturer certified warranty or one not backed by the dealer, the following statement must be made: “Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.”

Option 2

- Use the new form
- There is a substantial difference in disclosing non-dealer warranties. In selling under the revised Rule, one must either disclose the vehicle is being sold as is or that a dealer warranty is being issued. If a dealer warranty is being issued, that is when the box for “dealer warranty” is checked. If there is a warranty other than a dealer warranty, the as is box must be checked.

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-

Other New Requirements

- When disclosing the covered systems of a dealer warranty, a dealer may not use the shorthand term “powertrain”. It must disclose the individual covered systems like engine, transmission, differential.
- If you have customers sign the Buyers Guide, which we recommend since that is the best proof the customer saw and received the Buyers Guide, the following phrase must be used: “I hereby acknowledge receipt of the Buyers Guide at the closing of the sale.”

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Federal Trade Commission

Advertising

- The FTC has concentrated its authority and increased budget over car dealers under Dodd Frank on advertising
- Train your managers with ad responsibility and ad agencies
 - TILA and Leasing ads non-compliance. If you use a trigger term, use the follow on disclosures
 - Beware of “hidden triggers”
 - Bait and switch – This is the FTC’s hot button. Do not advertise net of incentives of limited availability without adequate disclosure, do not advertise deals that are not available, and keep proof of availability of deals when advertised
 - Advertising in all media involved, but internet advertising is the true target today
 - Understand the FTC’s digital advertising guidelines

CFPB

What is the Future of the Bureau

- House passed statute reforming the CFPB faces an uncertain fate in the Senate
- D.C. Circuit ruled that President can fire the Director without cause, but that faces en banc review
- Director's term is up in 2018, but political ambitions may move that date up
- Bottom line: federal agencies do not die, they simply face political reform; that will be incremental for the CFPB

CFPB

Dealer Reserve and Class Action Waivers

- Dealer Reserve – CFPB is enforcing its view through finance providers under its jurisdiction. Providers are still pressuring dealers.
 - Establish a written fair lending policy -- Review the NADA policy as an example
- Class Action Waivers – CFPB has proposed a regulation that will prevent waivers of class actions in predispute arbitration provisions in agreements acquired by finance sources under its jurisdiction
 - More than 6,000 comments
 - No action yet to finalize the proposal

CASH REPORTING

- The IRS is regularly auditing dealer compliance
- Report to the IRS the receipt of cash of more than \$10,000 in a transaction or in a series of related transactions on IRS Form 8300
- Penalties for cash reporting failures can be severe:
 - The IRS has taken a consistent position that subsequent violations of cash reporting for a dealer who has a previously unsuccessful audit will be deemed knowing violations with a \$25,000 per violation civil penalty
 - Make sure that the dealership has a cash reporting policy



8300 PROGRAM DESIGN

A written program utilizing a redundant system is critical

- Front line employees must recognize a cash deal and understand the information to be obtained from the customer
- Cashiers must code receipts for backup
- The general office is generally in charge of filing and should look for deals missed on the floor
- A backup system using the dealership's DMS to catch deals that are missed is critical
- REMEMBER: compliance on wholesale deals and in parts department

Recalls: A Continuing Hot Issue

- Every dealer should have a recall policy.
 - **Ground new vehicles with open recalls.** Everyone knows this, but what is the procedure to make sure new vehicles with open recalls are not being delivered?
 - **Fix open recalls on used cars that you can.** Disclose if you cannot.
 - **If your franchisor issues a stop sale on used vehicles pay attention to that.**
 - **Be sure you are checking service vehicles of your brand for open recalls.**
 - **Compensation for downtime?**

FAIR LABOR STANDARDS ACT

White Collar Exemption

- More delays in the appeal of the DOL's Final Rule that updates the white collar exemption to require employers to pay overtime compensation to full-time salaried executive, administrative and professional employees making \$47,476 per year or less
 - OT salary level previously \$23,660
 - If the Final Rule goes into effect, the percentage of full-time salaried employees that will be eligible for overtime pay will increase from approximately 7% to 35% which greatly impacts employers

Employment Practices

Wage and Hour Issues

- Employee vs. Independent Contractor. The government wants all personnel who work for you to be classified as employees unless it is clear that they fully meet the criteria as independent contractors
- Classification of Employees. Salespeople, qualifying mechanics, and “partsmen” are exempt from premium overtime -- know the limits
- Minimum Wage. The general office should check every pay period to determine whether exempt employees are making the minimum wage for each hour worked
- Premium Overtime. Ensure proper pay for those who are eligible

Harassment and Discrimination Complaints

Employers aware of employees making life difficult for a complaining employee have found themselves faced with retaliation claims

- Confidentiality matters
- Investigations should be handled discretely
- Limit the number of people with direct access to information about internal complaints
- Have a strict policy that retaliation will not be tolerated
- Monitor how a complaining employee is treated

DOCUMENTING EMPLOYEE DISCIPLINARY ISSUES

- Be consistent and document
- In writing and signed
- Employee Handbook should address potential termination for disciplinary issues
- These steps can protect the Dealer in claims of wrongful termination

Support Your Local Trade Association

- State and local dealer associations are the only means by which dealers can work together to protect their interests.
 - The effect of the mobility revolution.
 - The effect of the alternative energy evolution.
 - The effect of the online retail devolution.
- State franchise and licensing laws are protection to give dealers the opportunity to show they are superior in personal transportation marketing and distribution.

What the Development of Autonomous Vehicles Means for Dealers, and When the Impact May Start to Arrive

- Timing
- Phase-in
- Legal Implications
- Franchise Implications



State Licensing Laws are Critical

- We have always emphasized the importance of franchise laws. State licensing laws are no less important.
 - State licensing laws evolved to protect consumers from wrongdoing.
 - If state licensing laws are decreased or eliminated, the wild west of the internet will once again tar motor vehicle retailing.

QUESTIONS?

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