



# CONNECTICUT AUTOMOTIVE RETAILERS ASSOCIATION

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NOVEMBER 2009

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1. 2009 Dealer Symposium - Thank You to our Sponsors!

## ROUTE:

GENERAL MANAGER _____	SALES MANAGER _____
BUSINESS MANAGER _____	NEW CAR MANAGER _____
SERVICE MANAGER _____	USED CAR MANAGER _____
F & I MANAGER _____	PARTS MANAGER _____
TITLE CLERK _____	OTHER _____

**1.  
RED FLAGS RULE  
GETS FOURTH  
REPREIVE!**

The Federal Trade commission (FTC) recently announced that it will not enforce the Red Flags Rule until June 1, 2010, to give dealers additional time in which to develop and implement a written identity theft prevention programmed Flags Rule requires dealers (and other creditors and financial institutions) to develop comprehensive procedures to prevent identity theft. To comply with the rule, dealers must:

Develop a written identity theft protection program that contains reasonable procedures to identify, detect and respond to “red flags” indicating the possibility of identity theft;  
Involve senior management employees in approving the initial written program and implementing and administering the program thereafter;  
Update the program periodically to reflect changing identity theft risks;  
Train staff who implement the program; and  
Exercise appropriate oversight of service providers.

Dealers who have not yet finalized their programs should complete this as soon as possible to comply with the new June 1, 2010 deadline. The FTC previously delayed enforcement of the Rule as it continues to provide guidance on compliance to various business entities through materials posted at [www.ftc.gov/redflagsrule](http://www.ftc.gov/redflagsrule).

**2.  
FTC AMENDS  
ADVERTISING  
GUIDES**

The Federal Trade Commission (FTC) released versions of their *Guides Concerning the Use of Endorsements and Testimonials in Advertising* last month. The Guides were last updated in 1980. Some of the major changes are:

Previously, advertisements that showed consumers achieving unusual results could be shown as long as a "results not typical" disclaimer was included. The new version will also require the advertisement to clearly disclose the results that consumers can generally expect.

The Guides expand upon requirements to disclose the relationship between the advertiser and endorser when consumers would not normally expect compensation. In particular, word-of-mouth marketers and bloggers are required to disclose if they are paid or receive free products or discounts. Similarly, if an advertisement touts findings of a research organization when the research was sponsored by the company, these connections must be disclosed.

Similarly, if a celebrity endorser fails to disclose an advertising relationship in non-traditional contexts (e.g., talk shows or on social media sites such as Facebook or Myspace), they face enforcement action by the FTC.

**ADVERTISING  
GUIDES  
CONTINUED . . .**

While the Guides are not binding as law, they are quite influential since they represent the FTC's interpretations of the law. MADA strongly advises dealers to consult these guides (which contain several helpful examples) when putting together an endorsement or testimonial-related advertising campaign. Consult the new guide, available on the FTC's website, at:  
<http://www.ftc.gov/os/2009/10/091005revisedendorsementguides.pdf>.

**SAVE THE DATE! – CAR and the Department of Consumer Protection will be presenting an ‘Advertising Laws and Regulations’ Seminar on Thursday January 21, 2010. Look for Registration Materials in your mail within the next few weeks!**

**3.  
EPA RECONFIRMS  
SPCC QUALIFIED  
FACILITY RULE –  
COMPLIANCE DATE  
11/1/2010**

The U.S. Environmental Protection Agency (EPA) issued a final Spill Prevention, Control and Countermeasure (SPCC) rule on November 13, keeping intact a 2008 amendment designed to provide regulatory relief for small facilities, including dealerships. EPA has confirmed that “Tier 1” qualified facilities may use a simple, self-certified SPCC plan template in lieu of a complex written plan.

Tier 1 qualified facilities are those that:

- 1) Have 10,000 or fewer gallons in aggregate aboveground oil storage capacity and a maximum individual oil storage container capacity of 5,000 gallons, and
- 2) For the three years preceding SPCC plan certification, have no single discharge of oil to navigable waters exceeding 1,000 gallons, or two discharges of oil to navigable waters each exceeding 42 gallons within any 12-month period.

In 2006, EPA designated most facilities storing fewer than 10,000 gallons of oil and related fluids to be “qualified facilities” eligible to prepare and self-certify their own written facility SPCC plan, thereby avoiding the expense of hiring a professional engineer to do so. The new option for Tier 1 facilities is even less burdensome.

NADA Regulatory Affairs intends to publish further guidance on this issue in early 2010. [Click here](#) for a copy of the self-certification SPCC plan template.

**4.  
RISK BASED PRICING  
REGULATIONS  
AVAILABLE SOON  
FROM FTC**

Federal Trade Commission (FTC) representatives notified attendees at the recent ATA Legal Conference in Washington D.C. that Risk Based Pricing regulation will soon be published. This is one of the more controversial and complicated provisions of the federal FACT Act that has been phased in for more than five years. Other provisions of the law include regulations to require truncation of credit card numbers, the Red Flags Rule and disposal of consumer report information and more.

**RISK BASED PRICING  
CONTINUED . . .**

The Risk Based Pricing regulation states that, if a dealer or other creditor grants credit to a consumer on terms that are “materially less favorable than the most favorable terms available to a substantial portion of your other credit customers, based in whole or in part from information contained in a consumer credit report,” the creditor must provide the customer a notice.

While the rule is designed to educate consumers that failure to maintain a good credit score can impact the interest rates they pay when securing loans, complying with the regulation could prove quite problematic for dealers.

It is expected that the FTC may allow dealers to simply provide a notice to all credit customers containing a copy of their credit score. This is a disclosure that is already mandated in the California Car Buyers Bill of Rights and does not appear to be causing significant problems in that state. The FTC has indicated that it will give dealers several months to implement the rule before it is enforced.

**5.  
2010 FUEL ECONOMY  
GUIDES AVAILABLE**

The annual guide that provides consumers with important information about estimated fuel costs and mileage standards is now available for model year 2010 vehicles.

The U.S. Environmental Protection Agency and Department of Energy can distribute the Fuel Economy Guide to dealers electronically.

The guide is also readily accessible from a mobile device, smart phone or personal digital assistant at [fueleconomy.gov/m](http://fueleconomy.gov/m)

To meet regulatory requirements to display the booklet and provide a copy to consumers upon their request, dealers can print the guide from either the electronic file that would be emailed or download the guide at [www.fueleconomy.gov](http://www.fueleconomy.gov). Dealers can also order a printed paper guide.

Orders for the guide are accepted and will be mailed, free of charge, by the end of November. Orders for the paper guide can be made online at [www1.eere.energy.gov/library/feg\\_order\\_form.aspx?FormID=1](http://www1.eere.energy.gov/library/feg_order_form.aspx?FormID=1) or call the Department of Energy at 877-337-3463 between 8:00AM and 6: PM CST.

**6.  
PROGRESS OF  
NEW CONSUMER  
FINANCIAL  
PROTECTION ACT**

The House Financial Services Committee on October 22 approved the Consumer Financial Protection Act but agreed to exempt auto dealers from the agency's new financial watchdog.

The new Consumer Financial Protection Agency would have the power to write consumer protection rules for a host of activities involving loans or credit, and the ability to ban products and business practices it deemed "unfair, deceptive or abusive". The agency would also have the ability to examine banks and other companies for compliance with the rules and impose penalties for violations.

Before the final vote, the committee approved an amendment from Rep. John Campbell, (R-CA) to exempt dealer transactions from the oversight of the new Consumer Financial Protection Agency. Instead, dealer lending would continue to be regulated by the Federal Trade Commission and the Federal Reserve. The National Automobile Dealers Association led a grassroots campaign in support of the Campbell Amendment and the committee approved the amendment on a 47-21 vote.

"It makes sense to exclude dealers. Dealers had absolutely nothing to do with the credit crisis," said David Westcott, Chairman of the NADA government affairs committee and a multi-franchise dealer from North Carolina.

However, the bill still has a number of other hurdles before reaching the White House for final approval. The House Energy and Commerce Committee, which also has partial jurisdiction over the new agency, will have an opportunity to consider the bill before a House vote. The Senate will go through a similar process. The NADA's legislative office and dealers across the country will continue to be part of the process and the CAR Association will keep you informed of the bill's progress.

**7.  
YOUR QUESTIONS  
ANSWERED**

**Q: We're planning our annual holiday party but haven't decided whether liquor will be served. What are the pitfalls and can we do anything to avoid them?**

**A:** If liquor is served at a company-sponsored event and there is an alcohol-related injury or accident involving an employee, guest, or other third party, there can be a host of problems, ranging from claims under workers' compensation and an employer's general liability insurance to lawsuits seeking to hold the employer personally liable. In general, courts will look at whether or not an employer made a "good faith" effort to control alcohol consumption at the event.

**QUESTIONS  
CONTINUED . . .**

Here are some tips for limiting your liability:

- Hold the event off company premises
- Make attendance voluntary
- Don't conduct any company business at the event
- Hire professional bartenders
- Limit the time during which alcoholic drinks are served
- Limit the number of drinks per person
- Have rides available for employees and guests who have had too much to drink

Nearly 70% of Connecticut businesses responding to a recent survey said they serve alcohol at company-sponsored parties held off premises; only 25% of respondents said they would serve liquor on company property.

**Q: Due to layoffs over the past year, we have significantly reduced our head count. How do we determine how many employees we have for purposes of Family and Medical Leave Act (FMLA) coverage?**

**A:** The Federal FMLA (12 weeks of job-secure leave in any 12-month period) applies if you employed 50 or more employees during 20 or more calendar weeks (not necessarily consecutive workweeks) in the current or preceding calendar year. Thereafter, you remain subject to the federal FMLA until you no longer employ 50 employees' for 20 (nonconsecutive) workweeks in the current and preceding calendar year.

The Connecticut FMLA (16 weeks of job-secure leave in any two-year period) applies if you have 75 or more employees (as of October 1 annually). Once an employer meets the 75-plus threshold on October 1, the employer remains subject to Connecticut FMLA until the number of employees is determined on the following October 1.

Two situations typical in this economic climate require caution when counting employees for FMLA coverage purposes. Using workers from a temp firm may fall under the concept of joint employment, where two or more businesses exercise some control over the work or working conditions of the employee. Such workers are counted as "employees" of both businesses for determining FMLA coverage, but only the primary employer—typically the temp firm—is obligated to provide FMLA leave to such a worker.

Independent contractors, if they meet the definition of "contractor" under state and federal law, are not counted as employees.

If they do not meet the legal definition, however, and instead are deemed a contractor based on a handshake and common belief, they may actually be employees and thus counted for FMLA purposes. They may also represent other potential legal and financial problems triggered by misclassified workers.

**8.  
CAR ASSOCAITION  
AND U.S. ARMY  
RESERVE EMPLOYER  
PARNTERSHIP  
AGREEMENT**

At the CAR Association Annual Dealer Symposium Trade Exhibit and Charity Preview Party held on Thursday, November 5, 2009 the Connecticut Automotive Retailers Association signed an Employer Partnership Agreement with the U.S. Army Reserve. CAR Chair Mary Ellen Hadelman informed the attendees that “The agreement offers our soldiers an opportunity to interview for positions in Connecticut’s new car dealerships; it will also offer dealers the opportunity to have smart, talented, disciplined and dedicated employees... who have proven themselves in so many ways as part of the United States Military, work in our small businesses.” Though assured an interview with dealerships who have signed the partnership agreement, the candidate would have to be qualified and obtain any job strictly on their own merit.

If you would like to participate in this worthwhile program, please take a moment to sign the attached Agreement (**ATTACHMENT A**) and return it to either the CAR Association office via fax (860) 527-2582 or email [cara@ctcar.org](mailto:cara@ctcar.org) or you can send it directly to: Kenneth Forchielli, Military Personnel Services Corporation via fax (508) 757-3410 or email to [kenneth.forchielli@usar.army.mil](mailto:kenneth.forchielli@usar.army.mil). Please feel free to call the Association office (860) 293-2500 with any questions you may have.

**9.  
CAR AND NADA  
MEMBERSHIP  
PROVE MORE  
VALUABLE  
THAN EVER!**

Recent events in the automotive Industry – the bankruptcies, Cash for Clunkers, credit-crisis, challenges to state franchise laws and more illustrate more than ever the importance of the CAR Association and NADA’s proactive engagement in forcefully communicating dealer views and concerns to all branches of the state and federal government, to the manufacturers and to the public. The core mission of your state and national associations is being proven minute-by-minute in today’s volatile industry. Within the next few weeks we will be contacting those that have not yet renewed their CAR and/or NADA memberships to remind them that now is the time. If you have not already renewed your CAR and NADA memberships we urge you to take a moment to do so today!

**In Memoriam**

It is with great sadness we inform you of the death of Paula Morande, wife of longtime CAR Association member Bill Morande, retired owner of Morande Lincoln Mercury Mazda in Manchester and sister-in-law of member Bob Morande of Morande Ford and Morande Acura in Berlin.

Besides Bill, Paula leaves behind her daughter Jennifer, her son William, Jr and her five grandchildren who were the light of her life.

Memorial donations may be made to the Cystic Fibrosis Foundation, CT Chapter, 185 Silas Deane Highway, Wethersfield, CT 06109, [www.cff.org](http://www.cff.org)

The CAR Association Officers, Members and staff offer our deepest condolences to the entire Morande family.