Vermont VADA Est. 1945

Helping You Drive Vermont's Economy

January 31, 2022

Greetings <<First Name>>,

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Dealer Deadlines

Form 8300 Notification/Cash Reporting

The IRS requires that customers who are identified on cash reporting Form 8300 during 2021 be notified in writing by **January 31, 2022**. Form 8300 is required to be reported on any consumer transaction in which your dealership receives more than $10,000 cash. The notice must state your dealership name and address, the amount you reported on the form, and a statement that the information has been reported to the IRS. For additional information, consult the IRS Form 8300 Reference Guide.

OSHA Form 300A

OSHA Form 300A for 2021 must be posted from February 1 to April 30. The form, which is a summary of work-related injuries, must be posted each year, even if no recordable work-related injuries or illnesses occurred during the year. The form and instructions can be found on OSHA's website.

Changes Required to Comply with Amended Safeguards Rule

Dealerships must make changes to comply with the amended FTC Safeguards Rule. The final amendments to the Safeguards Rule were issued in fall 2021 and dealerships have one year from the date of the rule publication to comply with most of the new requirements.

NADA hosted a webinar overview of the amended safeguards rule on Tuesday, January 18. The archived recording of that webinar will be available on the NADA website. Additionally, NADA is updating its existing Driven guide on the Safeguards Rule, with publication expected in spring 2022.
Some of the changes include:

- Designating "a qualified individual responsible for overseeing and implementing your information security program and enforcing your information security program."
- Completing a written risk assessment that addresses specific areas of risk.
- Implementing controls for access to information systems.
- Encrypting data and implementing multi-factor authentication.
- Monitoring and logging both authorized and unauthorized activity.

- Monitoring service providers.

NADA Answers Treasury on LIFO

As you may recall from November 2021, 20 Senate Democrats and 91 Democrat and Republican members of the House of Representatives sent letters to the U.S. Department of the Treasury urging it to act expeditiously to provide relief to dealers on new vehicle LIFO who will experience significant LIFO recapture as a result of unprecedented inventory declines caused by actions related to the pandemic.
In letters the Treasury Department sent on November 29, 2021, to members of United States Senate and United States House of Representatives who petitioned Treasury to expeditiously grant auto dealers temporary LIFO relief under Section 473 of the Internal Revenue Code, Treasury stated:

(i) "Businesses that primarily source and produce inventory within the United States are not eligible for [Section 473] relief…"; and

(ii) "If relief is provided, businesses with global supply chains would need to demonstrate… that the decrease in closing inventory… is directly and primarily attributable to the foreign disruption in the supply chain."

In response, NADA sent a letter to Treasury yesterday stating:

(i) The first condition imposed by Treasury is not present in either the statute (section 473 of the Internal Revenue Code) or its legislative history and therefore should not preclude relief to otherwise eligible dealer taxpayers; and

(ii) The second condition has been met by a very strong letter that the Alliance of Automotive Innovators sent to Treasury on January 21, 2022, at NADA's request.

The Alliance letter certified and provided supporting data demonstrating that (a) "auto dealers have been unable to acquire a sufficient number of new vehicles from manufacturers to replenish their depleted inventories"; and (b) "[t]his decreased inventory production is primarily a result of the foreign supply chain disruptions caused by actions related to the COVID pandemic, especially with

respect to semiconductor shortages."

The NADA letter also cited a Fact Sheet released by The White House on January 21, 2022, that supports the Alliance's certification by explaining that pandemic-related disruptions to foreign semiconductor factories have resulted in the reduced production of automobiles.

The NADA letter stated that the information provided by the Alliance – as supported by the White House Fact Sheet – satisfies Treasury's second condition for relief, and that Treasury should therefore move forward with the issuance of a *Federal Register* notice authorizing LIFO relief for affected dealers. NADA further stated that it is prepared to assist Treasury and the Internal Revenue Service with the subsequent development of election and calculation procedures that dealers would need to claim the relief.
NADA expressed its gratitude to the Alliance for its efforts to quickly generate and deliver a compelling letter supporting its franchised dealers on this issue. Be on the lookout for additional NADA updates on subsequent related developments.

OSHA Announces End to Enforcement of the Emergency Covid-19 Vaccine-or-Test Mandate; Proposed Rulemaking Remains

The Biden administration has announced that, effective January 26, 2022, it is withdrawing its emergency Covid-19 vaccine-or-test mandate. However, the administration also announced that it is still considering whether to issue a Covid-19 vaccine-or-test mandate utilizing standard notice-and-comment rulemaking procedures.

On November 5, 2021, OSHA issued an emergency rule mandating that businesses with 100 or more workers either require employees to be fully vaccinated or pass weekly Covid-19 tests. The mandate's future has been uncertain since the January 13, 2022, U.S. Supreme Court decision which said

that OSHA could not enforce the standard while an appeals court considered the rule's legality. This ruling indicated that the Supreme Court was likely to decide that the standard exceeded OSHA's legal authority to prevent workplace health hazards.

For dealerships, the administration's announcements mean the following:

- For the time being, the specter of a federal Covid-19 vaccine-or-test mandate has ended officially;
- The possibility of a new rule from OSHA imposing such a mandate remains, and dealers should continue to monitor updates on that rulemaking from NADA; and
- Dealers should review and follow their state and local Covid-19 workplace health and safety requirements, as the end of federal involvement – temporary as it may be – may spur states or localities to adopt their own mandates.

FTC Warns Companies to Remediate Log4j Security Vulnerability

Log4j is a ubiquitous piece of software used to record activities in a wide range of systems found in consumer-facing products and services. Recently, a serious vulnerability in the popular Java logging package, Log4j (CVE-2021-44228) was disclosed, posing a severe risk to millions of consumer products to enterprise software and web applications. This vulnerability is being widely exploited by a growing set of attackers. Check if you use the Log4j software library by consulting the Cybersecurity and Infrastructure Security Agency (CISA) guidance.
Source: FTC

Dealership Workforce Study: The Only Way to Get Benefits, Compensation Data

Do you ever wish you knew how your dealership's compensation and benefits compared to your competition? There's only one way to find out: The NADA and ATD Dealership Workforce Study.

Participants in the NADA and ATD Dealership Workforce Study, which open this month, receive detailed reports specific to their businesses. The NADA report compares their business to similar dealerships in the nation and region. The first-ever ATD study will compare heavy duty truck dealerships to those similar based on sales volume, location, and brand.

Both NADA and ATD study participants will receive one-year access to the Database Search Tool, which gives users online access to the data and the ability to search for specific queries down to a zip code radius.

Dealerships who choose not to participate in the study may obtain general information in the future but will have to pay for it.

VADA strongly recommends that member dealerships participate in the Dealership Workforce Study.

Record Retention, Destruction Frequently Asked Questions

Why shouldn't our dealership keep records longer than required?
Doing so creates significant legal and security risks. VADA recommends regularly shredding outdated paper records.

How do retention requirements differ for electronic records?
It is permissible for dealerships to store records electronically, provided IRS requirements are met.

- Records must be indexed and searchable by customer name and chronologically. It's not enough to have the record stored—you must be able to find it quickly.
- Records stored electronically must be capable of being accurately reproduced. The storage system must produce and print an exact reproduction of the original document as opposed to creating a new document with the same data points as the original.
- Security for electronic records must be the same as or better than the security for paper records.

Where can our dealership find comprehensive record retention guides?
You can consult NADA's A Dealer Guide to Federal Records Retention and

Reporting.

The Phillips Report: 2021 Benchmarks of Value

Trade Assessments, Appraisals Should Include Emissions System Inspection

The US Environmental Protection Agency has undertaken a national compliance initiative targeting aftermarket defeat devices and vehicle emissions control tampering as a priority of the agency. Three separate investigations and hundreds of vehicles in other states have already been announced by the EPA. Earlier this month Xtreme Diesel Performance of Las Vegas entered into a consent judgment with EPA in which it agreed to stop manufacturing and selling defeat devices and to pay a reduced civil penalty of over a million dollars. Any dealership that sells diesel vehicles needs to be familiar with emissions tampering and understand that yes, the laws do apply to them.

In addition to the federal prohibition on selling defeat devices (and it does not matter whether the defeat device is sold new and on its own or already installed), consumer protection statute requires the full disclosure of any material fact when selling retail goods. At a minimum this requires disclosure that the vehicle's emissions system does not meet federal standards and requirements and very arguably includes a myriad of other required disclosures, including the cost of restoring the emissions system to compliance (which reportedly can exceed $10,000), and that the vehicle will not pass emissions and registration standards in many states.

VADA recommends that all vehicle trade assessments and appraisals include an inspection to verify that the original emissions system is fully intact and in compliance with federal requirements. Trade customers should be made aware of the significant impact that emissions tampering has on the value of their vehicle.
The operative provisions of the federal Clean Air Act are set out below. Pay close attention to the language in bold print.

“The following acts and the causing thereof are prohibited—

(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for **any person** to manufacture or **sell, or offer to sell**, or install, **any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine**, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and **where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use**.”

EPA Links

- Aftermarket Defeat Devices and Tampering are Illegal and Undermine Vehicle Emissions Controls
- National Compliance Initiative: Stopping Aftermarket Defeat Devices for Vehicles and Engines
- Xtreme Diesel Performance, LLC, Clean Air Act Settlement

5,000 Fake Employers Flagged on Car Loan Applications Since 2019: Here’s How to Spot Them

More than 5,000 fake employers have appeared on auto loan applications over nearly three years, according to the fraud screening firm Point Predictive. The deception was associated with about $1 billion worth of loan value from February 2019 to December 2021, Point Predictive said Thursday. It estimated fake employer loan application volume grew from about $7 million per month to $35 million per month during that time. "The rise in the use of fake employers on credit applications is astounding, and the $1 billion threshold only proves the

growing threat of this problem," Point Predictive senior fraud analyst Justin Hochmuth said in a statement. "We're uncovering about 100 new fake employers that are being created each week." Point Predictive Chief Strategist Frank McKenna told Automotive News on Friday he expected 2022 to be a "pretty significant fraud year" because of factors such as vehicle scarcity and interest rates. Dealers should be particularly vigilant during tax season, between February and May, McKenna said. To read more, click here. (Requires subscription.)
Source: Automotive News
