Helping You Drive Vermont's Economy

November 2, 2021

Greetings <<First Name>>,

In this Issue

- It's Time to Fall Back!
- Stay Current on COVID-19 Information for Vermont
- FTC Adds Comprehensive Requirements to Safeguard Rules
- FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements
- NADA’s Legislative Advocacy Efforts
- Visit Las Vegas for NADA Show 2022
- Limited-Time Discounts on Commercial Lighting
- News of Note

It's Time to Fall Back!

Just a friendly reminder… Turn your clocks back one hour Sunday, 11/7/21 at 2:00 a.m., as Daylight Savings Time ends.

It is also a great time to change the batteries in your smoke detectors!

Stay Current on COVID-19 Information for Vermont

For the latest information and resources on COVID-19 in Vermont, save this link to the Vermont Department of Health:

https://www.healthvermont.gov/covid-19

FTC Adds Comprehensive Requirements to Safeguards Rule

Last week, the FTC issued its final amendments to its Safeguards Rule. The Rule contains a significant number of new and expanded procedural, technical and personal requirements that financial institutions, including dealers, must satisfy to meet their information security obligations.

The new requirements include:
(a) developing and implementing specific components of an information security program, such as access controls, authentication, and encryption; and

(b) requiring actions related to the program’s accountability, such as hiring or retaining “qualified” personnel and conducting periodic reports to the financial institution’s governing body.

While several of the new obligations may already be in place at many dealerships, others vastly expand what most dealers have developed and will require additional investments in software, technology and potentially dealership personnel. The challenges involved in satisfying the new obligations could also increase dealers' liability exposure.

Dealers and their relevant technology vendors must comply with the new requirements of the Rule within one year of its upcoming publication in the *Federal Register.* Dealers are encouraged to reach out to their technology vendors soon to ensure they are taking the steps needed to comply with the new requirement. Several of the requirements do not apply to financial institutions that maintain customer information on fewer than 5,000 consumers.

NADA and GADA will soon provide additional updates to dealers with compliance guidance and resources.

FTC Puts Hundreds of Businesses on Notice about Fake Reviews and Other Misleading Endorsements

The Federal Trade Commission is blanketing industry with a clear message that, if they use endorsements to deceive consumers, the FTC will be ready to hold them responsible with every tool at its disposal.

The rise of social media has blurred the line between authentic content and advertising, leading to an explosion in deceptive endorsements across the marketplace. Fake online reviews and other deceptive endorsements often tout products throughout the online world. Consequently, the FTC is now using its Penalty Offense Authority to remind advertisers of the law and deter them from breaking it. By sending a Notice of Penalty Offenses to more than 700 companies, the agency is placing them on notice they could incur significant civil penalties—up to $43,792 per violation—if they use endorsements in ways that run counter to prior FTC administrative cases.

“Fake reviews and other forms of deceptive endorsements cheat consumers and undercut honest businesses,” said Samuel Levine, Director of the FTC’s Bureau of Consumer Protection. “Advertisers will pay a price if they engage in these deceptive practices.”

The Notice of Penalty Offenses allows the agency to seek civil penalties against a company that engages in conduct that it knows has been found unlawful in a previous FTC administrative order, other than a consent order.

The Notice sent to the companies outlines a number of practices that the FTC determined to be unfair or deceptive in prior administrative cases. These include, but are not limited to: falsely claiming an endorsement by a third party; misrepresenting whether an endorser is an actual, current, or recent user; using an endorsement to make deceptive performance claims; failing to disclose an unexpected material connection with an endorser; and misrepresenting that the experience of endorsers represents consumers’ typical or ordinary experience.

Companies receiving the notice represent an array of large companies, top advertisers, leading retailers, top consumer product companies, and major advertising agencies. A full list of the businesses receiving the Notice from the FTC is available on the FTC's website. A recipient's presence on this list does not in any way suggest that it has engaged in deceptive or unfair conduct.

In addition to the Notice, the FTC has created multiple resources for business to ensure that they are following the law when using endorsements to advertise their products and services, which can be found on the FTC's website. The Commission vote to authorize the Notice and its distribution was 5-0.

The Federal Trade Commission works to promote competition and to protect and educate consumers. You can learn more about consumer topics and file a consumer complaint online or by calling 1-877-FTC-HELP (382-4357). For the latest news and resources, follow the FTC on social media, subscribe to press releases and read our blogs.

NADA's Legislative Advocacy Efforts

NADA has several legislative priorities in the next few weeks:

1. To obtain workable and broad electric vehicle (EV) tax credits to help dealers spur wide consumer EV adoption;
2. To minimize tax threats as the legislation progresses in the House and Senate; and
3. To urge members of Congress to encourage the Treasury Department to grant NADA's petition providing temporary and targeted LIFO relief for dealers with historically low levels of inventory.

EV Incentives
NADA is working not only to pass the simplest and broadest application of EV tax credits, but to also make sure that EV tax incentives "work in the showroom" and are fully refundable and transferable to allow dealers to provide "cash on the hood." Prompt reimbursement for dealers is key.
The sponsors of the EV tax credit continue to insist on a union differential bonus; however, the final structure of the proposal is still undetermined. NADA has for many months supported improving the consumer tax credits and has advocated for the broadest application of EV tax credits to help spur wide EV adoption among consumers.

Tax Increases
In a recent update, NADA warned that the threat of major tax increases looms

large, although not at the $3.5 trillion level.
As the reconciliation bill is scaled-back to achieve consensus among Democrats, the level of taxes and spending will be reduced. NADA's leadership is continually meeting with key members and staff on the Hill to get a better sense of what is being negotiated so they can respond to the threat of specific tax increases as they arise. NADA is part of a broad coalition opposing attempts to limit the 199A provisions, because that would drain the working capital necessary for dealers and other small businesses to maintain jobs and investments in the face of economic uncertainty.

LIFO
Finally, many dealers who use the LIFO accounting method may face significant, unexpected tax liability due to historically low inventories which triggers LIFO recapture. NADA is asking members of Congress to follow up on NADA's petition to the Treasury Department to allow dealers to replace their new-vehicle inventories over a three-year period due to a major global interruption of vehicle production. The Treasury Department has the discretion to grant NADA's petition but has been reluctant, as the statute has not been utilized before.

Dealers are encouraged to contact Democratic Congressmen from Vermont Peter Welch at https://welch.house.gov/contact with the request that they urge Treasury to grant temporary LIFO relief for businesses facing difficulty replacing inventories due to government and other actions that created a major global interruption of vehicle production.

For additional information and issue briefs, visit www.nada.org/legislativeaffairs.

Visit Las Vegas for NADA Show 2022

Registration is open for the 2022 NADA Show, which will be held in person in Las Vegas on March 10–13.

The annual convention and expo will be valuable for dealers and managers, with opportunities ranging from attending education sessions and learning from keynote speakers to making connections with vendors at the expo. Learn more at **show.nada.org**.

Limited-Time Discounts on Commercial Lighting

Is your dealership using old fluorescent, incandescent, or CFL lighting? Then now's the time to upgrade to LEDs. Efficient lighting takes the effort out of maintaining a well-lit business. For a limited time, you can get the highest instant-off discounts of the year on commercial LED lighting. You can get up to $60 off interior lighting fixtures and up to $125 off outdoor lighting right at the point of sale.

Learn More!

News of Note

Dealerships Changing Hands at Record Rates

There may be some potential headwinds next year, but for 2021, brokers for dealership mergers and acquisitions report the dealership buy-sell market is still red hot, reports Wards Auto. The question for buyers and sellers is how long the current, favorable environment can last, with demand outpacing supply, record average transaction prices for new and used vehicles, and pent-up demand for parts and service. Cuts in dealership head counts and marketing budgets have also contributed to record profitability. Kerrigan Advisors, says the total number of completed dealership transactions was 144 in firsthalf 2021, an increase of 27% vs. a year ago, and on track to surpass a record of 289 buy-sells last year. For the 12 months ended June 30, the total number was 320, up 11%, the company says. "Today, we are tracking to hit another record," says Erin Kerrigan, founder and managing director of Kerrigan Advisors, Irvine, CA. In a webinar hosted by the American International Automobile Dealers Assn., she predicts 2021 buy-sells will pass 350 in 2021.

Source: Ward's Auto

Cars on American Roads Keep Getting Older

The average age of vehicles on U.S. roads has been rising for decades as cars grow ever more durable — and expensive. The average age of a car on U.S. roads rose to 12.1 years in 2021, according to IHS Markit. The average age had been 11.9 years in 2020. In 2002, the average age was 9.6 years.

IRS Reminds Business Owners to Correctly Identify Workers As Employees or Independent Contractors

The Internal Revenue Service reminds business owners that it's critical to correctly determine whether the individuals providing services are employees or independent contractors. An employee is generally considered to be anyone who performs services, if the business can control what will be done and how it will be done. What matters is that the business has the right to control the details of how the worker's services are performed. Independent contractors are normally people in an independent trade, business, or profession in which they offer their services to the public.

U.S. Agency Confirms Air Bag Safety Probe Into 30 Million Vehicles
U.S. auto safety investigators have recently opened a probe into 30 million vehicles built by nearly two dozen automakers with potentially defective Takata air bag inflators. The National Highway Traffic Safety Administration (NHTSA) has opened an engineering analysis into an estimated 30 million U.S. vehicles (nearly 1,400 different models) from the 2001 through 2019 model years.

A New EV Charger Can Provide 100 Kilometers of Range in 3 Minutes
ABB Ltd. is preparing to roll out the first of its ultra-fast charging stations in a matter of weeks, providing enough power in less than three minutes to charge any electric car to drive 100 kilometers (62 miles). The rollout of the Terra 360 stations, where a single charger can feed electricity into four vehicles at once, is starting in Europe before the end of the year and will spread to North and South America as well as Asia in 2022.

Rivian Gets U.S. Regulatory Approval to Deliver EVs to Customers
Rivian Automotive Inc. says it has received full regulatory certifications and can start delivering its debut electric vehicle to U.S. customers. According to reports, Rivian vehicles have been fully certified by NHTSA, EPA and CARB, and can be sold across the U.S.

Report: Nickel Shortage Spells Trouble for EVs
The auto industry's move to electric cars could encounter hiccups caused by a shortage of nickel — one of the most widely used minerals for EV batteries — as soon as 2026, according to research from consultancy Rystad Energy. Discussions about electric vehicles' appetite for raw materials have tended to overlook nickel, focusing more on the supply challenges and societal impacts of cobalt and lithium.

Yet according to Rystad's timelines, nickel could be one of the first battery minerals to experience shortages. By 2024, global demand for nickel will have risen from 2.5 million tons to 3.4 million tons, surpassing supplies, the group said. For battery makers and car manufacturers, the crunch will be felt within the following two years, with "no obvious solution in sight," wrote analysts at the Norway-based consultancy.

That would add another layer of complexity to the balancing act facing electric vehicles, at a time when auto manufacturers are under pressure from policymakers in the United States to electrify their fleets. The Biden administration has a goal of converting 50 percent of all new car sales to electric models by 2030, and states like California and New York are also preparing regulations that will phase out gas-car sales by 2035.

Nickel chemistries tend to allow for better range, noted James Ley, a senior vice president at Rystad, in an email to E&E News. Many prospective EV buyers cite a vehicle's range — or the mileage granted by a single battery charge — as a key consideration. If shortages were to drive the price of nickel to "historic highs," while simultaneously doing the same for the cost of other raw materials like lithium, Ley added, the sticker price of a new electric car could conceivably rise by a few thousand dollars, making them harder to sell.

Still, looming nickel shortages don't make for an insurmountable obstacle, when considering President Biden's goals, Ley said. Automakers "can mitigate tightness in nickel," he wrote, including by switching to new battery chemistries that don't contain nickel, as Tesla and Volkswagen have already pledged to do. Rystad's note yesterday coincided with two new market surveys showing that EVs' share of car sales is ticking upward, although a boom hasn't quite materialized. In its first-ever quarterly report on electric vehicle sales, the auto industry's main trade group found that between April and June, EVs made up 3.8 percent of the total market in the United States.

That was the highest quarterly percentage ever, up from 2.2 percent during the same quarter last year, according to the group, known as the Alliance for Automotive Innovation. The Alliance's President, John Bozzella, said the report "showcases the momentum we are seeing in consumer acceptance of zero emission vehicles across the country." Yet the group also called on policymakers to commit new funds for EV chargers and incentives for EV buyers, while helping to grow domestic supplies of key materials.

A second report, produced by the International Council on Clean Transportation (ICCT), found that in 2020, EVs constituted 4.6 percent of all new cars sold globally — also a record percentage. The number of public EV chargers grew by nearly 50 percent, the group said. And the average cost of battery packs fell 12 percent, a favorable sign for the price of new EVs. ICCT also took stock of how policymakers in some parts of the world have embraced EVs as a solution for addressing climate. By the end of 2020, over 20 countries, provinces and states across Europe and North America had pledged to end gas car sales, the group wrote.

But analysts at Rystad think nickel's scarcity might compromise EVs' public image. As miners seek out new sources of nickel, they wrote, controversies over the social and environmental impacts of nickel production could mushroom, and potentially "tarnish" manufacturers of electric cars, wrote analysts at the Norway-based consultancy. Carmakers might increasingly look to "previously unattractive sources," including deposits located in Indonesia — the world's biggest producer of nickel, but a place with a shaky record of protecting local ecosystems from nickel's waste streams, said Ley.

The global standard-bearer for electric cars, Tesla Inc., has already made early overtures to Indonesian officials about acquiring supplies there. The company's chief executive, Elon Musk, said earlier this year that nickel was his "biggest concern" in scaling up production of lithium-ion batteries, spurring Tesla to partner with major mining company BHP to lock up supplies. Some carmakers "might be reluctant to get tied up with Indonesia when looking at new supplies," wrote Ley in an email to E&E News, but they'll face competition for supplies from the stainless steel industry, which remains the biggest source of demand for nickel. "So this is definitely a problem," he wrote.

Source: Matt Cota, VT Fuel Dealers Association
