



Helping You Drive Vermont's Economy

Vermont Vehicle and Automotive Distributors Association

DRIVETRAIN

Latest regulatory reminders, state requirements & industry happenings

July 1, 2022

Greetings <<First Name>>,

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Watch for Registration Link to July 14th VADA FTC Safeguards & Cybersecurity Webinar

VADA recently partnered with ComplyAuto to host a webinar discussing the requirements of the new FTC Safeguards Rule that will be enforced in December of this year. The FTC provided dealers a year since the new rules

were announced in late 2021 to become compliant. Compliance involves many layers, including but not limited to formation of a written cyber security program, cyber threat vulnerability testing, multi-layer email security protocols, vendor data protection agreements and employee training. Dealers must begin the compliance process now if not commenced already. Fines for non-compliance can be up to \$46,517 per violation. Registration information will follow next week.

From VT Fuel Line Newsletter

All EVs The Vermont Agency of Natural Resources has taken the first step to adopting the California Advanced Clean Cars II and Advanced Clean Trucks regulation by filing a formal rule change. The [60 page document](#) released this week requires that all passenger car and light-duty truck vehicles sold in Vermont by 2035 meet the definition of zero-emission vehicles (ZEVs). The Advanced Clean Trucks Rule requires the sale of at least 30% zero-emission medium and heavy duty trucks by 2030. The decision to file was discussed at Vermont Climate Council's Transportation Task Group Meeting on Tuesday. [Click here](#) to watch.

On the Road Again AAA predicts that nearly 48 million people will travel over the July 4 holiday, with 42 million traveling by car. If travel meets that forecast, it will represent a 3.7 percent increase over 2021.

FTC Proposes Sweeping New UDAP Rule Affecting Motor Vehicle Dealers

On June 23, 2022, the Federal Trade Commission (FTC) proposed a rule that would impose a wide range of unwarranted and ill-advised new duties and restrictions on motor vehicle dealers. (A summary description of these proposed new obligations is set out below.) The FTC's proposal relies on the agency's authority in section 5 of the FTC Act to issue rules that



prohibit unfair or deceptive acts or practices (UDAP). However, the FTC fails to provide sufficient support to justify its sweeping set of proposed duties and restrictions.

NADA is mounting a comprehensive and detailed response to the proposal, which will defend the highly competitive and pro-consumer benefits of the optional, dealer-assisted financing model, and show that, in fact, the FTC's proposal is likely to *harm* consumers.

In addition to proposing sweeping new obligations, the proposed rule seeks comments to justify even more expansive regulations. Specifically, in its proposal the FTC asks 49 sets of open-ended questions on issues related to the proposed duties and restrictions, including (1) whether they should be expanded (e.g., "should additional restrictions be placed on all add-ons?" and "[s]hould the Commission consider... requiring retail installment sales contracts to include a clause prohibiting financing-contingent sales, prohibiting the dealer from transferring title to a trade-in vehicle or performing any repairs or reconditioning before a sale is final or requiring dealers to return trade-in, deposit, and fees, if financing is not approved?") and (2) how the market operates (e.g., "Do dealers already calculate a figure equivalent to the Offering Price for every vehicle in their inventory?" and "[h]ow many add-ons do dealers typically offer, and how many of those are sold regularly?").

These unusually broad inquiries are more typical of an *Advanced Notice of Proposed Rulemaking* when an agency seeks information that could potentially lead it to issue a proposed rule. The FTC's omission of this preliminary and vital step casts serious doubt on whether its proposals are the result of neutral, thorough and carefully considered market research into the auto purchasing process.

The FTC has provided the public 60 days to respond to the proposed rule after it is published in the *Federal Register*. NADA will seek an extension of time to file and then submit an in-depth response to the FTC's proposal that will further educate the FTC on the array of consumer benefits provided by dealers, and explain how the many flaws in the FTC's proposed rule will threaten those benefits.

The duties and restrictions in the [proposed rule](#) generally include –

1. A prohibition against **misrepresentations** involving any of 16 different activities related to the advertising and sales process;

2. A requirement that dealers **disclose**:

- a vehicle's "offering price" (the full cash price a dealer will sell or finance a motor vehicle to a consumer excluding only required government charges) in any advertisement or communication with a consumer that references a specific vehicle or any monetary amount or financing term for a vehicle;
- an "Add-on List" on each website, online service, or mobile application (or, for other forms of communication, a website, online service, or mobile application where a consumer can view the Add-on List) that includes an itemized list of all of the dealer's optional "Add-on Products or Services" and the price of each item (or, if the price varies, a price range the typical consumer will pay for the item);
- that the purchase of "Add-ons" is not mandatory;
- the total amount a consumer will pay to purchase or lease a vehicle when the dealer makes any representation about monthly payment amounts;
- the amount of any consideration provided by the consumer; and
- whenever comparing payment options and discussing a lower monthly payment, that a lower monthly payment will increase the total amount the customer will pay to purchase or lease a vehicle (if such statement is true);

3. A prohibition against **charging** for any "Add-on Product or Service" that would provide no benefit to the consumer (with certain types of products identified);

4. A requirement that dealers **make certain disclosures and conform to other requirements**, including obtaining a newly defined and redundant form of express and informed consent, regarding such optional "Add-ons"; and

A requirement that dealers **retain** for 24 months an extensive set of records that include, among many other items, all advertisements, sales scripts, training materials, and marketing materials regarding the price, financing, or lease of a motor vehicle; all "Add-on" lists and all documents describing such products and services; calculations of loan-to-value ratios in contracts including GAP Agreements; and copies of all written consumer complaints related to a wide variety of topics.

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FTC Investigates Right to Repair Under Magnuson Moss Warranty Act

The Federal Trade Commission is taking action against motorcycle manufacturer Harley-Davidson Motor Company Group, LLC for illegally restricting customers' right to repair their purchased products.

The FTC's complaint charges that the company's warranties included terms that conveyed that the warranty is void if customers use independent dealers for parts or repairs.

The FTC is ordering Harley-Davidson to fix warranties by removing illegal terms and recognizing the right to repair, notify customers, and ensure that dealers compete fairly with independent third parties.

The FTC has announced that it is making it a priority to protect consumers' right to repair their products. In May of 2021, following Congress's directive for the Commission to report to the Committees on Appropriations of the House and Senate regarding anticompetitive practices related to repair markets, the FTC published a right to repair report titled Nixing the Fix. The report examined consumer protection and antitrust issues relating to repair restrictions, with particular emphasis on those imposed by car manufacturers.

The FTC also issued a 'Policy Statement on Repair Restrictions Imposed by Manufacturers' pledging to ramp up investigations into illegal repair restrictions. That policy states that "While unlawful repair restrictions have generally not been an enforcement priority for the Commission for a number of years, the Commission has determined that it will devote more enforcement resources to combat these practices....prioritizing investigations into unlawful repair restrictions under relevant statutes such as the Magnuson-Moss Warranty Act."

Under the Magnuson Moss Warranty Act (MMWA), a company is prohibited from conditioning a consumer product warranty on the consumer's using any article or service which is identified by brand name unless it is provided for free.

The MMWA also requires warrantors of consumer products to provide consumers with detailed information about warranty coverage.

Section 102(c) of the MMWA prohibits warrantors from conditioning warranty

coverage on the consumer's use of an article or service identified by brand, trade, or corporate name, unless the warrantor provides that article or service without charge or the warrantor has received a waiver from the Commission. No waivers have ever been granted.

According to the FTC's complaints, Harley-Davidson failed to fully disclose all of the terms of its warranty in a single document, requiring consumers to contact an authorized dealership for full details.

The FTC alleges that these terms harm consumers and competition in multiple ways, including: restricting consumers' choices, costing consumers more money, undercutting independent dealers and reducing resiliency.

As part of enforcement, Harley-Davidson will be prohibited from telling consumers that their warranties will be void if they use third-party services or parts, or that they should only use branded parts or authorized service providers. If the companies violate these terms, the FTC will be able to seek civil penalties of up to \$46,517 per violation in federal court.

They will also be required to add specific language to warranties saying, "Taking your product to be serviced by a repair shop that is not affiliated with or an authorized Harley Davidson Dealer will not void this warranty. Also, using third-party parts will not void this warranty."

Harley-Davidson is also being required to direct authorized dealers to remove deceptive display materials, train and monitor employees, and not promote branded parts and dealers over third parties.

Used Vehicle Warranties

As the Federal Trade Commission (FTC) increases enforcement action under the Magnuson-Moss Warranty Act (MMWA), dealers are reminded of compliance with used vehicle warranty requirements.

When a dealership sells a used vehicle with a dealer warranty, the FTC Buyer's Guide cannot alone serve as the warranty document. A customer who buys a used car with a dealer warranty must also receive a separate warranty document.

The MMWA requires that a warranty must be a written description of a consumer's rights. The description must be clearly worded, in a single document.

The Buyer's Guide specifically states that it isn't a warranty document, as the form states "Ask the dealer for a copy of warranty coverage, exclusions, and repair obligations."

While the Buyer's Guide may contain some of the descriptions of coverage required by the MMWA, it does not have all the mandated terms. The MMWA mandates certain disclosures in a warranty. For example, a limitation on damages or coverage limitations such as non-assignability are not addressed in the Buyer's Guide.

To protect the dealership against claims, be certain that your warranty documents are provided separately from the Buyer's Guide and that they comply with terms required by the MMWA.

Dealers should work with their legal counsel to ensure that the warranty documentation for any dealer warranties is legally sufficient under federal and state law.

Cox Automotive Lowers Full-Year New-Vehicle Sales Forecast as Persistent Supply Problems Continue to Hold Back Auto Industry

<https://mcusercontent.com/4fcd8b1d3282c7bccf178889b/images/f17a11ee-a0fb-40f0-f0aa-bc9a7382d6af.jpg>

The image shows a banner for VADA (Vermont Automobile Dealers Association). On the left is a green license plate with "Vermont" at the top, "VADA" in large white letters in the center, and "Est. 1945" at the bottom. The background of the banner is a scenic photograph of a winding road through a valley with colorful autumn trees. Overlaid on the bottom left of the banner is the text "DRIVE TO SUCCEED" in large, bold, white capital letters. Below this text, in smaller white font, is the tagline "Advertise with most relevant news, business, economic & legislative reports".

DRIVE TO SUCCEED
Advertise with most relevant news, business, economic & legislative reports

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