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## Final CARS push as payouts near 100%

Dealers still struggling for CARS reimbursements have until Oct. 13 to notify the government of their hardships. The Transportation Department reported in late September that nearly all valid claims have been paid.

An exception process outlined Sept. 23 by the National Highway Traffic Safety Administration creates a process for dealers to obtain voucher payments. However, dealers must have completed CARS deals by the deadline and been unable to submit applications due to “hardship” caused by the agency.

The NHTSA on Oct. 2 still was examining several unique reimbursement issues, such as trade-ins that were held in trust or vehicles that were mistakenly categorized—Category 1 truck instead of a Category 2 truck.

Due to the overwhelming demand on the system and hotline from dealers, NHTSA conceded it could not handle or answer all of the questions or difficulties dealers faced, which led to some dealers being unable to complete and submit applications by the deadline.

Under the exception, dealers must

SEE **CARS**, PAGE 4

## CATA resolves flood of toll violation notices

By DAVE SLOAN

CATA EXECUTIVE VICE PRESIDENT

Staff members from the CATA and the Illinois Automobile Dealers Association have been working with the Illinois Tollway regarding the wave of toll violation notices sent this summer to many automobile dealers. We are pleased to report that an agreement has been reached that will allow dealers relief from the fines.

Our intent was to negotiate an agreement short of dealers having to place a transponder in every dealership vehicle because of the administrative difficulty

such a policy would cause. While the Tollway could not agree to our request at this time, they compromised by requiring dealers to purchase transponders only for those dealer plates associated with a violation notice.

Therefore, if you contact the Tollway by Oct. 15 and buy a transponder for those plates that have been sent a violation notice dated Aug. 5-Oct. 15, 2009, you only will have to pay the cash rate tolls; the fines will be dismissed. (Dealers who do not yet have an I-PASS account will have to register for one, as well.) Each account must be backed by

SEE **TOLLWAY**, PAGE 4

## BBB examining how warranties are advertised

By PATRICIA KELLY

A question arose recently on the issue of which motor vehicle advertisements that promote dealer warranties in connection with the sale of vehicles would violate Rule 475.590 of the Illinois Motor Vehicle Advertising Regulations, which prohibit free gifts or other incentives with negotiated sales.

Industry representatives and Illinois attorney general staff discussed the issue at an Auto Dealers Advisory Council meeting in September. Participants agreed that only those dealers who absorb the cost of repairs under such warranties would obey the language of Rule 475.590 (c), which states: “Nothing in

this Section shall prohibit a dealer from including a warranty with the purchase or lease of a vehicle. A warranty shall not be advertised as using the word ‘free.’” Most dealers do not absorb this risk themselves but purchase insurance to cover the costs of honoring these warranties.

In the future, the BBB will ask for substantiation of the way dealers deal with the risk to them resulting with the warranties they sell. If a dealership buys insurance to cover potential loss or sells a service contract, that dealership cannot advertise its own warranty as included in the purchase price of a

SEE **WARRANTIES**, PAGE 2

## CATA President Cizek to retire



Cizek

Jerry H. Cizek III, who since 1988 has been the top staffer of the Chicago Automobile Trade Association, has announced his retirement, effective next year.

Cizek joined the CATA in 1973 as a field representative who visited dealers to help overcome problems, and mediated consumer complaints. He became director of dealer relations in 1979, then executive vice president and auto show

general manager in 1988. The title changed a few years later to CATA president.

His ties to the market's automobile retailing stretch back even further. Cizek's grandfather and father were Chrysler-Plymouth dealers in Chicago's Logan Square neighborhood.

Cizek issued the following statement:

"After more than 36 years with the CATA, the last 21 as its president and CEO and general manager of the Chicago Auto Show, I have informed the board of directors of my intention to extend my contract one more year and retire in July 2010. I will work with the Board and new president to ensure a smooth and orderly transition.

"Through the years, it has been a sincere privilege for me to witness and be a part of the incredible changes that have occurred to our association and auto show. I have met a great many people who have had a huge impact on my life and influenced my leadership skills.

"The CATA Board has established a search committee whose mission is to identify the association's next leader, a person who will build on the strength and traditions of the CATA's past to ensure a strong and vibrant future for the association. The search committee has retained Spencer Stuart, an executive search firm in Chicago, to pursue potential candidates.

"This family decision was complicated and noteworthy in that the CATA and the auto show have been a significant part of my life. As each has grown in stature and service, to its members and exhibitors, I am proud to have played a part in this process.

"As a side note, my grandfather was an officer and director of the CATA from 1950 to 1958 and was chairman of the 1955 Chicago Auto Show. Yes, I remember the Amphitheatre, as a kid! There have been only six general managers of the Chicago Auto Show since 1901, and I'm honored to be included in that number."

## Oregon dealer Tonkin elected 2010 chairman of the NADA

Ed Tonkin of Portland has been elected the 2010 chairman of the National Automobile Dealers Association. Utah dealer Stephen Wade is the new vice chairman. Both officers assume their positions at the next NADA convention, Feb. 13-15 in Orlando, Fla.

"It's humbling to be elected by your peers to such an important position," says Tonkin. "It's an honor." He said his law degree will help him lead the association through myriad legislative and regulatory challenges in 2010.

Tonkin's father, Ron Tonkin, was 1989 NADA chairman.

## Warranties

CONTINUED FROM PAGE 1

vehicle without violating Rule 475.590 (a) which states: "It is an unfair or deceptive act for a dealer to advertise or offer free prizes, gifts or other incentives in connection with the purchase or lease of a vehicle where the vehicle is sold or leased at a price arrived at through bargaining or negotiation, unless the dealer meets the requirements of subsection (b) of this Section." If a dealer does not buy insurance but absorbs any loss itself then such an advertisement published by that dealer would be permitted by Rule 475.590 (c).

The BBB is aware that this is an important fine point in the advertising of dealer warranties sold with vehicles and will continue to monitor this form of advertisement. The BBB will ask for substantiation to make sure that only those dealers who actually cover this loss themselves engage in this form of advertising.

The BBB desires to maintain a situation where dealers who include their own warranties with the purchase of vehicles and who then absorb the costs of repairs under these warranties, without insurance to cover their loss, are allowed to advertise the availability of the warranties.

*Patricia Kelly is senior counsel of the BBB of Chicago and northern Illinois.*

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Listings of items for sale are subject to the approval of the CATA. Candidates for employment must submit a full resume to the Editor.

Review past editions dating to 1998 or search by subject at <http://cata.drivechicago.com>.

**Jerry H. Cizek III**  
**Erik K. Higgins**

**President, Publisher**  
**Editor, Director of Dealer Affairs**

## Dealers urged to maintain efforts on CFPA

By **RAY SCARPELLI SR.**

METRO CHICAGO NADA DIRECTOR

Dealers from across the country gathered in the nation's capital in September for the NADA's annual legislative conference. Congressman Barney Frank (D-Mass.), who chairs the House Financial Services Committee, said he plans to exclude auto dealers from being regulated by the provisions of the proposed **Consumer Financial Protection Agency** (CFPA).

Dealers who visited Capitol Hill told their congressmen that auto financing should not come under the authority of the new agency as it is already regulated by other federal agencies and the states. Under the proposed CFPA, any business that extends credit—whether a discount retailer providing layaway services or a lawyer or doctor who allows a client or patient to carry a tab—would be subject to new rules.

Although the NADA was pleased by Rep. Frank's announcement, many legislative hurdles remain. The NADA urges dealers to continue to contact their members of Congress to encourage them to exclude auto financing from this legislation.

In other legislative and regulatory news . . .

### **IRS Offers New Directive on UNICAP**

The IRS industry director, Heavy Manufacturing and Transportation, Large-and-Mid Size Business Division, issued a memo Sept. 15 offering auditors direction on conducting Uniform Capitalization audits of franchised dealers. The memo, "Tier II—Field Directive on the Planning and Examination of IRC § 263A issues in the Auto Dealership Industry," is not official law or the IRS's position, but it includes an "audit tool kit."

Further, the memo notes that the IRS is suspending examination of § 263A issues—UNICAP issues—through 2010 "to encourage compliance" and to let dealer-taxpayers "voluntarily change their methods of accounting to comply with the legal reasoning outlined in [a September 2007 Technical Advice Memorandum]." The memo also addresses UNICAP examinations in progress. Dealers should consult with their tax practitioner about this development. More news is at [www.nada.org/regulations](http://www.nada.org/regulations).

### **Get Ready for the Flu**

The Small Business Administration is encouraging small business owners to create a plan and talk with their employees to make sure everyone is ready for what's expected to be a bad flu season. Even having one or two employees out for a few days can adversely affect operations and the bottom line, says SBA administrator Karen Mills. To help

employers, the SBA created a flu preparedness guide. It includes tips on writing a continuity plan for operations as well as measures to help keep employees healthy. It's available at [www.sba.gov/flu](http://www.sba.gov/flu).

### **In NADA news . . .**

The NADA is ceasing publication of **AutoExec Magazine**. In announcing the decision to close the 81-year-old publication, NADA president Phil Brady said: "A long-term downturn in print advertising, coupled with the unprecedented restructuring in the automobile industry and a pronounced shift toward online communications, necessitated the decision. The NADA has been very fortunate to have had high-quality professionals producing an award-winning print magazine for so many years, and I want to emphasize that this decision is in no way a reflection on the AutoExec staff." The NADA will move forward with a new emphasis on online communications.

A Florida dealer has won the latest **Energy Star Small Business Award**. Preston Hood Chevrolet, in Fort Walton Beach, Fla., was one of just seven businesses nationwide chosen by the EPA for the annual award. Employees there formed a Green Team 18 months ago and used the NADA/Energy Star publication, "Putting Energy into Profits," as a guide. They targeted lighting by using fewer bulbs, rewiring to cut wattage by 50 percent, increasing natural lighting, and installing occupancy sensors and photocell controls. They also replaced AC and heating units with Energy Star-rated equipment. In all, the dealership cut electricity by 12 percent last year, saving \$16,000, and cut gas heating costs by 34 percent, saving \$7,000. They also launched a recycling program.

"Changing the way a company does business after 40 years is a challenge, to be sure, but Preston Hood Chevrolet has a legacy of being a committed community partner, and we felt starting this energy-saving program was the right thing to do for the area we call home," said Taylor Hood, general manager.

The NADA is cosponsoring a special **Dealer Day event** on Nov. 4, during the annual Specialty Equipment Market Association (SEMA) show in Las Vegas. This one-day conference is designed to give dealers the knowledge they need to successfully integrate an accessory sales program into their stores. (Aftermarket sales amount to nearly \$32 billion a year.) A dealer panel and other industry experts will discuss various topics, including strategies to speed accessory sales, integrating accessory sales into the sales process, and increasing used inventory turns with accessorizing. Advance registration is \$75.

## Restrictions exist on text-messaging customers

Dealers who want to reach customers, prospective customers, or others via “text messaging” first must consider the legal landscape. That landscape was crafted before the days of text messaging, and the federal agencies and the courts are struggling to apply those old rules to this new technology.

A text message may be deemed to be a phone call, an e-mail, or perhaps even both under federal law. As a result, text messages potentially are subject to a number of federal restrictions.

The Telephone Consumer Protection Act generally governs phone calls. The TCPA and the Federal Communications Commission implement regulations that govern “telephone calls” without defining that term. The FCC, however, considers text messages to be “phone calls.” Under the TCPA—and at least one court that reviewed the issue concurs—this has several implications:

- You cannot send a text message “solicitation” to a phone number that is on your company-specific “do not call” (DNC) list.
- You also cannot send a text message “solicitation” to a phone number that is on the national DNC list (subject to the “established business relationship” and other provisions of the national DNC

rules).

- You cannot send any text message whatsoever to a cellular telephone number—solicitation or not, whether the number is on a DNC list or not—using an “automated dialer system” unless you have obtained the called consumer’s “prior express consent.”

This general ban applies to all text messages sent without consent, including sales pitches, service reminders, and communications with current customers.

What is an “automated dialer system”? It is defined as “equipment which has the capacity (a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers.” This TCPA definition of “automated dialer system” may cover computers used to send automated text messages.

That means the FCC may consider *any* text sent by a computer to be improper under the TCPA (unless you have the consumer’s prior express consent).

On a related matter, the Federal Trade Commission increased its annual fee to access the DNC Registry. Effective Oct. 1, it costs \$55 for each area code, up from \$54 in the government’s last fiscal year.

signed supporting documents and certifications required,” the NHTSA wrote.

Among interesting statistics from the program, 37 people accepted \$3,500 or \$4,500 on trade-ins that were less than 1 year old. Another CARS transaction involved a 1997 Bentley Continental R, which was one of the most powerful and exclusive cars in the world and valued new at \$300,000 and beyond.

The most popular clunker was the Ford Explorer, with 69,887 copies turned in, accounting for roughly 10 percent of the trade-ins under the program. Toyota topped all makes with 19.4 percent of the 690,114 vehicle sales.

## Tollway

CONTINUED FROM PAGE 1

a valid credit card.

Please be advised, however, that dealers must ensure that every dealership-plated vehicle using the Tollway either pays cash or has a transponder in it—whether the transponder is owned by the dealer, a dealer employee or the customer—to avoid a violation notice. If the dealership receives a violation notice, the dealer would have a 21-day grace period to purchase a transponder for that particular lettered plate to avoid paying the fines.

Please note that if you have a number of dealership plates which have not been involved in a violation, or your violations notices have been previously resolved, you will not have to buy transponders for those plates unless you receive a future violation while using those plates.

That is why it is important for your dealership to have a policy that those dealer vehicles using the Tollway be equipped with a transponder owned either by an employee, a customer or the dealership.

The Tollway has designated a handful of customer service representatives to handle this process. Call (630) 241-5497 and have your dealership information and violation notices ready. They will take down your information, route it to the appropriate representative and then contact you back to minimize your inconvenience.

Dennis O’Keefe, the CATA’s general counsel, developed a rider for dealers to add to their rentals and loaners paperwork. The rider would indemnify a dealer from fines a customer causes on a toll road; from other traffic violations, like cameras that detect speeding and red-light violations; and parking tickets.

The rider would authorize the dealership to charge any police fines to the customer’s credit card. A copy of the rider is included in this newsletter.

## CARS

CONTINUED FROM PAGE 1

describe in writing why they qualify for the exception and provide evidence of why the problem was the NHTSA’s fault.

“Such evidence may include copies of correspondence, such as electronic mail, documenting that the dealer contacted the agency regarding issues with its application. The dealer also must present proof that the qualifying deal was made on or after July 1 but no later than Aug. 25, 8 p.m. EDT, by submitting paper copies of all completed and