



# CATA Bulletin

DRIVE **CHICAGO** .COM  
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## *Do-not-call registry near*

### **Make any needed telemarketing changes by Oct. 1**

Dealers who conduct telemarketing should make sure their practices are modified by Oct. 1, when the national do-not-call list takes effect.

Under the FTC's amended Telemarketing Sales Rule, dealers can call only customers who (1) have provided written consent in advance of any call, (2) have made a purchase within the last 18 months, or (3) have contacted the dealership with an inquiry in the past 90 days.

Al Babbington, chief executive of CallCommand, a Web-based calling system used by dealers to maintain close relationships with their customers, offers the following compliance guidelines:

- Clean up your Dealer Management System (DMS) database. Merge, purge and cleanse the data so that you have a clear understanding of who has done business with you in the past 18 months.

- Centralize your prospect initiatives. Keep Internet, showroom and phone prospects in a single file so that you can easily identify prospects who have not inquired in the last 90 days.

- Talk to your "Lost Souls." Sales and service customers who have not done business with you in the past 18 months are great prospects for a "welcome back" offer. Call them before Oct. 1 to deliver an offer, and thus re-establish a relationship, or the right to commu-

nicate with them in the future will be lost.

- Add opt-in language to your privacy policy. Get express permission to call on an opt-in basis with your customers and prospects.

- Maintain a dealer-specific no-call list. Ensure that all employees who use the telephone understand the importance of compliance.

- Telemarketers still must properly identify themselves as a seller and explain that they are making a sales call before pitching a product or service.

For more on complying with the Telemarketing Sales Rule, go to the Federal Trade Commission's Web site, [www.ftc.gov/bcp/conline/pubs/buspubs/tsrcomp.htm](http://www.ftc.gov/bcp/conline/pubs/buspubs/tsrcomp.htm)

## **Certification needed to move hazardous waste**

Having proper training and certification for dealership parts and service staff who handle hazardous materials is underscored by an August investigation of a New Jersey dealership by an agent of the Federal Aviation Administration's security and hazardous materials division, as well as increased scrutiny of hazmat shipments since the incidents of Sept. 11, 2001.

The hazmat disquiet in New Jersey concerned dealership parts employees who shipped air bags airborne via Federal Express. The employees properly included a declaration of dangerous goods with the shipment. Unfortunately, the dealership failed to train its parts employees on hazmat shipping and receiving.

Dangerous goods shipped by air must always be properly packaged, marked, described, classed and labeled. While per-violation penalties can reach \$30,000, the New Jersey dealer escaped with a warning.

## **State Department changes tax policy for diplomats**

The U.S. State Department has issued new procedures, effective immediately, for allowing a Diplomatic Tax Exemption on the official or personal purchase of an automobile.

Before the transaction is completed, the Office of Foreign Missions must clear each vehicle purchase for tax exemption.

Cliff Seagroves, diplomatic tax exemption officer, said that for dealerships to prove to

taxing authorities that a vehicle was/is eligible for diplomatic tax exemption, the dealer must obtain and maintain the following documentation:

- Obtain a letter of authorization for vehicle tax exemption from the Office of Foreign Missions by calling 202-895-3563 or 202-895-3500, or the nearest OFM Regional

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## Gas mileage zooms in importance of vehicle choice: new study

The importance of gas mileage has ascended in importance in deciding which new vehicle to purchase, according to a J.D. Power and Associates study released this month.

Miles per gallon now is fifth on the list of reasons new-vehicle buyers reject one model over another—up from 13th in 2002, the 2003 Escaped Shopper Study found.

“Between the concerns over the Middle East, high gas prices and the growing trend toward larger and more powerful engines, it is not surprising that 15 percent of new-vehicle buyers cite gas mileage as a reason for rejecting a vehicle they once considered buying,” said Chris Denove of J.D. Power.

The study, which examines why new-vehicle shoppers ultimately reject vehicles they consider, finds that shoppers are most concerned with price-related factors, making them likely to purchase the least expensive model on their consideration list.

“Brands such as Hyundai, Kia, Suzuki and Mitsubishi are rarely considered exclusively. However, they are able to maintain high closing ratios when they’re cross-shopped

against other makes,” said Denove. “Such brands tend to place a greater emphasis on competitive pricing and value, and that is one of the strongest lures in the market.”

Incentives continue to play a significant role in the decision to purchase or reject vehicles. Among all vehicles rejected, 16 percent are rejected for lack of sufficient rebates/incentives, and 14 percent are rejected because they do not offer sufficiently attractive financing incentives.

Domestic manufacturers appear to be satisfying customers with incentive packages. The percent of domestic vehicles rejected for lack of financing incentives has dropped from 15 percent in 2001 to 12 percent in 2003.

“Many manufacturers that have ratcheted up their incentive marketing dollars to combat a down economy have found themselves in an incentive spiral that has proven difficult to exit,” Denove said. “Consumers are likely to expect incentives such as low-interest financing, particularly from domestic manufacturers, for years to come.”

The 2003 Escaped Shopper Study is based on responses from 32,330 new-vehicle owners.

## Dealers above EPA threshold must have written plan, training against spills

Recent news releases about a U.S. Environmental Protection Agency deadline are incorrect and could lead to costly mistakes by dealers. The releases indicated the EPA had extended its deadline for SPCC Plan implementation. In fact, the deadline concerns updated plans, not new ones.

SPCC is an acronym for Spill Prevention, Control and Countermeasures. The rule intends to keep an oil spill from infiltrating the nation’s waterways by putting spill prevention measures in place and teaching employees what to do if the measures fail or are circumvented.

The SPCC rules, first enacted in 1973 and recently revised, apply to dealerships with above-ground storage tanks in excess of 1,320 gallons, and drums containing oil or oil-

related materials.

Considering the various new oils, used oils, transmission fluids and brake cleaning materials, it is easy to exceed the threshold limit of 1,320 gallons. The director of the U.S. EPA’s SPCC division even wants emptied antifreeze containers included in the materials inventory because the containers invariably become contaminated with oil.

Dealerships with more than 1,320 gallons must develop a written SPCC plan and implement staff training in support of that plan.

Recent SPCC news mentioned a delay provided to dealers for SPCC plan implementation. However, that delay con-

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### Secretary of state newsletter going cyber

“Vehicle Services Bulletin,” a monthly newsletter for vehicle dealers and remittance agents, no longer will be printed and mailed by the Illinois secretary of state.

Beginning with the October edition, the two-page newsletter that has printed on yellow paper may be viewed only on the agency’s Web site.

Beginning in October, editions will appear at [www.cyberdriveillinois.com/publications/motorist](http://www.cyberdriveillinois.com/publications/motorist)

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Review past editions or search by topic at [www.cata.info/](http://www.cata.info/)

**Jerry H. Cizek III** President, Publisher  
**Erik K. Higgins** Editor, Director of Dealer Affairs

## Franczek Sullivan reviews high court rulings

The U.S. Supreme Court, in its 2002-2003 term, addressed a variety of labor and employment issues. This review summarizes key decisions and analyzes their likely impact on employers.

### Standard of proof in employment litigation

In *Desert Palace v. Costa*, the Court unanimously rejected the reasoning of most lower federal courts regarding the proof required in mixed-motive Title VII cases (situations where both legitimate and illegitimate reasons allegedly motivated an employment decision).

Until this ruling, most federal courts required plaintiffs in mixed-motive cases to present direct evidence of discrimination, such as a statement by a decision-maker acknowledging that the employer used discriminatory criteria in its decision.

The court rejected that reasoning and held that a plaintiff must produce only circumstantial evidence of discrimination to win under the mixed-motive theory. Direct evidence is not required.

Now that plaintiffs may rely upon circumstantial evidence to avoid dismissal of Title VII lawsuits under the mixed-motive theory, it is even more crucial that employment actions are based solely on legitimate business reasons unrelated to an employee's protected status.

### Americans with Disabilities Act

*Clackamas Gastroenterology v. Wells* evaluated the increasingly common question of whether shareholder-directors are qualifying "employees" for purposes of the ADA and other federal anti-discrimination statutes. To qualify as an "employer" under the ADA, a business must employ 15 or more employees for 20 weeks during the current or previous calendar year. Determining the number of employees can be difficult in a professional corporation, where the owners (who are not qualifying employees under the ADA) also work for the business.

The Court held that whether a shareholder-director is a qualifying "employee" is fact-specific and depends on the extent of control exercised over the workplace. Many factors are relevant to this analysis, including whether the shareholder-director "can hire and fire employees, can assign tasks to employees and supervise their performance, and can decide how the profits and losses of the business are to be distributed." The shareholder-director's title is not determinative.

The Court remanded the case to the district court with instructions to apply the revised multi-factor test. This case clarifies that shareholder-directors may constitute "employees" under the ADA

anyone could act, more than 300 gallons of lube oil covered the service department floor and was running down the drain. Fortunately, the dealership was less than 1 month old, so the triple traps were empty and they contained the spill.

Other dealerships have not been so lucky, and the EPA does not want dealers to depend on luck.

CATA allied member ComplyNet Corporation can perform free evaluations to help dealers determine if they need an SPCC plan. Call 847-655-2907 to speak to a consultant.

## CATA labor lawyers named tops in Illinois

Franczek Sullivan P.C., a Chicago law firm which represents CATA dealers in labor and other employment matters, has been recognized as Illinois's most prominent management-side employment and labor boutique.

The ranking was issued by Chambers USA, a division of the London-based Chambers and Partners. Research for the Chambers USA rankings is gathered from in-depth, 30-minute telephone interviews with clients and with attorneys.

"Founded in 1994," the Chambers USA ranking for Franczek Sullivan stated, "the firm has quickly carved out an impressive reputation for itself, and is considered by many to be the top boutique in Chicago."

Member dealers of the CATA can call Franczek Sullivan at 312-986-0300 for help in defense of employee unionization efforts and for advice on various management issues.

and similar employment statutes depending on the circumstances, notwithstanding their ownership interest.

## EPA

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cerned updates to existing plans. Any dealer who has more than the threshold quantity of storage containers but no plan already in violation and subject to substantial fines. A dealer who suffers an uncontained spill but has neither a written SPCC plan or proper training could be subject to sizable penalties.

A few years ago, a dispenser seal on a CATA dealer's oil tank failed while the compressor was turned on. Before

## Diplomats

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Office.

- Make a copy of the foreign diplomat's ID.

Existing vehicle registration procedures do not change as a result of this new policy.

For more on this issue, visit the State Department on-line at [www.state.gov/ofm/resource/notes/23330.htm](http://www.state.gov/ofm/resource/notes/23330.htm)

## In Memoriam

**Gabor Bushy**, president of Suburban Buick in Wheaton and Elmhurst Chevrolet, died Sept. 8.

He is survived by his wife Kimberly, sons James and Patrick, daughters Nancy and Megan, stepsons Mark and Ryan, and one grandson.

Visitation is 3-9 p.m. Sept. 15 at Williams-Kampp Funeral Home in Wheaton, and the funeral is Sept. 16.

Memorials may be made to the Gabor Bushy Memorial Fund, c/o Bank One, 2000 S. Naperville Rd., Wheaton, IL 60187.

**Deb Taylor**, the wife of CATA director Dave Taylor, died Sept. 2 at age 50.

She was an animal activist, a member of PETA, Farm Sanctuary and the World Society Protection of Animals. Memorials may be made in her name to PETA, Attn. Allison Smith, 501 Front St., Norfolk, VA 23510.

In addition to Dave Taylor, a Chrysler and Dodge dealer in Kankakee, Deb Taylor is survived by daughters Tracy Ehrich, Trish Ehrich and Stephanie Taylor.

**Judith Haggerty**, the wife of Pontiac-GMC dealer Gerard Haggerty, died Aug. 30.

In addition to her husband Jerry, who founded Haggerty Pontiac-GMC in Villa Park, Judith Haggerty is survived by sons William, Ryan and Jerry; daughters Kathleen, Mary Beth, Linda and Sharon; and 16 grandchildren.

Jerry Haggerty served as a director of the CATA from 1988 to 1997, including as chairman of the board, 1992-1993.

The family requests memorials to the Cystic Fibrosis Foundation, 312-236-4491.

## Martin Boyer deflects unemployment claims

One hundred thirteen CATA dealer members reported a combined 537 unemployment claims to the Martin Boyer Co. during the second quarter of 2003. The company's efforts saved those dealers a total of \$1.24 million in benefits by contesting the claims.

Martin Boyer monitors any unemployment claims against its clients. About 200 CATA dealers are clients of the company.

Claims that can be protested and subsequently denied help minimize an employer's unemployment tax rate. The rate can vary between .06 percent and 6.8 percent of each employee's first \$9,000 of earnings. The average unemployment tax rate among Illinois employers is 3.1 percent, or \$279 annually.

"The unemployment tax is really the only controllable tax, in that it's experience-driven," said Paul Schardt, senior vice president of Martin Boyer. An ex-employee's claim affects the employer's tax rate for three years.

Client fees amount to \$2.10 per employee, per fiscal quarter. For the fee, Martin Boyer monitors all unemployment claims, files any appeals, represents the client at any hearings, verifies the benefit charge statements and confirms the client's unemployment tax rate.

Martin Boyer has represented CATA members since 1979. To discuss retaining the company, call Schardt at 312-381-8241.

## Hazmat

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The parts director immediately discontinued shipments until two parts employees who handle hazmat were sent to day-long training classes.

Other items considered hazmat include liquid-filled shocks, batteries, paints, chemicals, and hazardous wastes off-site.

"A Dealer Guide to the Federal Hazmat Transportation Regulations," an NADA publication, can be used as an in-house training and certification document. To order the NADA guide, call 800-252-6232, ext. 2.

Outside training classes also is an option. Remember to keep any certification on file for each employee trained.

## Congratulations!

**Greg Joutras** of Bill Jacobs Volkswagen in Aurora has been named to the Wolfsburg Crest Club, which represents Volkswagen's top North American dealers.

The Volkswagen Sales Guild named **Jason Komyatti** of the Autobarn of Countryside among 50 salespeople that represent the top 1 percent of Volkswagen sellers in North America.

**Gregory Foskett** and **Robert Suranovich**, of Larry Roesch VW of Bensenville, were recognized as outstanding Volkswagen service and parts professionals.