



CATA Bulletin



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CATA closed Dec. 23, 30



The administrative office of the CATA in Oakbrook Terrace, Ill., will close Dec. 23 and 30 to celebrate the Christmas and New Year's holidays.

The CATA board of directors and staff wish all our members a healthy and prosperous 2006!

Documentary service fee set at \$57.33 for 2006

The state's maximum documentary service fee for 2006 is \$57.33, the Illinois attorney general's office announced Dec. 15.

The \$1.94 increase over the 2005 maximum fee reflects a 3.5 percent rise in the federal Consumer Price Index for the 12-month period ending Nov. 30. The index is tracked by the U.S. Department of Labor.

As always, the DOC fee is taxable and must be substantiated upon request by the attorney general's office.

The CATA developed a poster regarding the DOC fee that dealer members can post. Two copies of the poster are included with print editions of this newsletter, and limited additional copies are available upon request.

On the poster, the DOC fee amount is blank and left for dealers to fill in; a dealer may charge any amount up to the maximum allowed, but every customer must be charged the same amount.

IMPORTANT: The new maximum fee cannot be charged before Jan. 1.

Actions 'a credit wreck for consumers'

Attorney general sues 2 area dealers over delayed trade-in payoffs

Illinois Attorney General Lisa Madigan this month sued two Chicago area dealers for failing to make timely payoffs on the loan balances of customers' traded-in vehicles, alleging the customers were unnecessarily hounded by creditors and forced to make payments on vehicles they no longer owned.

In separate lawsuits, Madigan charged Montell Chevrolet in Chicago and Montell Pontiac in Blue Island with violating the state's Consumer Protection and Deceptive Business Practices Act.

Madigan seeks to bar the dealerships from advertising or selling vehicles; a \$50,000 civil penalty; restitution to any harmed customers; and additional penalties of \$50,000 for each violation found to be committed with the intent to defraud.

In one instance, a customer on April 5 reportedly traded in her 2004 Pontiac Grand Prix, and the dealership agreed to settle the \$22,500 loan balance within 10 days. A month later, the woman's former loan provider began to call, stating the payoff had never been made and the loan was de-

linquent.

After multiple requests, the dealer sent a payoff check to the provider on June 14, but the check bounced. Another check was sent July 5, and in late August, a final check was sent to pay the additional late payments and late fees due on the woman's account. As of October, the woman's credit report included negative remarks regarding late payments on the Grand Prix loan.

The attorney general's consumer protection division received 14 consumer complaints against the Pontiac store and three against the

Chevrolet store, all for taking from 45 days to 167 days to settle their customers' loan balances. Both dealerships are registered with the same principal.

"Trading in another vehicle when purchasing a new car is a common practice that, in these cases, turned into a credit wreck for consumers," Madigan said.

"Consumers were falsely assured . . . that the unpaid balances on their trade-in cars would be paid off, when, in fact, the businesses were stalling the payments."

The suits are filed in Cook County Circuit Court.

NADA offers reminder of company-specific do-not-call responsibilities

Paul Metrey, an attorney for the National Automobile Dealers Association, said this month he has received reports of dealers being sued for violating the Federal Communications Commission's and the Federal Trade Commission's company-specific do-not-call (DNC) rules.

To help protect dealers against these lawsuits, Metrey offers the following recap of the company-specific DNC rules:

Both the FCC and the FTC administer and enforce similar company-specific DNC rules. The FCC rules apply to intrastate and interstate telephone solicitations, whereas the FTC rules are limited to interstate telephone solicitations.

In addition to agency enforcement, the Telephone Consumer Protection Act authorizes private lawsuits in state court, if permitted by the state, with damages of up to \$500 per violation (which can be tripled if the violation is knowing or willful).

The company-specific DNC rules predate, and are entirely separate from, the National DNC Registry rules that took effect in October 2003. Dealers must comply with both sets of rules.

- The Company-Specific DNC rules require dealerships to:

- 1) Not initiate a telephone solicitation to any consumer who has asked the dealership not to call him or her,

- 2) Develop a company-specific DNC List to record such requests and the time they were made,

- 3) Develop a written policy for maintaining the Company-Specific DNC List and train personnel engaged in any aspect of telemarketing on the dealership's company-specific DNC procedures, and

- 4) Ensure that, during any telephone solicitation, the caller identifies

- (i) himself or herself,

- (ii) the name of the dealership, and

- (iii) the address or telephone number where the dealership may be contacted (which cannot be a 900 number or other number for which the consumer would incur charges that exceed his or her local or long-distance transmission charges).

Dealerships must honor a company-specific DNC request regardless of whether the consumer has registered his or her phone number on the National DNC List or whether an established business relationship exists with the consumer. In fact, a company-specific DNC request terminates an established business relationship.

The request must be honored even if the consumer continues to do business with the dealership.

The dealership's written company-specific DNC policy must be "available upon demand." There is no requirement

that the dealership send the consumer written confirmation that he or she has been placed on its company-specific DNC List.

Dealers are reminded of the need to transmit their Caller ID information when conducting telephone solicitations. The phone number may be any number associated with the dealership which allows the consumer to identify it. This includes the number assigned by its carrier, the specific number from which its sales representative place a call, the number of a party that made the telephone solicitation on its behalf, or its customer service number.

The number must permit an individual to make a DNC request during regular business hours (9 a.m. to 5 p.m. Monday through Friday).

The dealership, or a person placing a telephone solicitation on its behalf, must be able to record DNC requests at that number. Therefore, if the person answering calls at that number is not the same person who made the telephone solicitation, or if the dealership is using an automated system to answer calls, the dealership nevertheless must ensure that its company-specific DNC responsibilities are satisfied.

Some state laws are more restrictive. The federal rules permit a business to call consumers who make an inquiry to the business for up to 90 days; in Illinois, the limit is 30 days.

For additional information, see the NADA publication, "A Dealer Guide to Federal Telemarketing Restrictions," which was mailed to all NADA members in September 2003.

Note: the 2-year-old publication does not address subsequent telemarketing developments, such as the enactment of the CAN-SPAM Act of 2003 and the Junk Fax Prevention Act of 2005.

2006 Chicago Auto Show

First Look for Charity, Feb. 9; Public Days, Feb. 10-19

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

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

Jerry H. Cizek III President, Publisher
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Strength in numbers—and unity

By Ray Scarpelli Sr.

METRO CHICAGO NADA DIRECTOR

The board of directors of the American International Automobile Dealers Association has voted to form a connected political action committee. If the AIADA follows through with its plan, all dealers should be aware of considerations that could create legal risks for them.

The Dealers Election Action Committee is a connected PAC, meaning it is controlled by the NADA and, under federal election law, can solicit donations only from association members. If the AIADA creates a second connected PAC, they might ask dealers who are also NADA members to give written permission to be solicited by the new PAC. But dealers can give permission to solicit to only one connected PAC each year.

If NADA members who have given solicitation permission to DEAC sign and return the AIADA's permission form, they could inadvertently violate federal election law, whether or not they actually contribute to both PACs in one year.

While we certainly hope that you continue to support DEAC, our primary concern is avoiding legal exposure for NADA members. If you have questions, please call DEAC at 703-821-7110.

Of course, the NADA's success in Washington is not due solely to DEAC. The association's Legislative Affairs and Regulatory Affairs staffs have been especially busy recently:

Officials of the NADA testified before the Senate Nov. 16 for **improved vehicle title data and history** information to be made public faster and more uniform, so that consumers *and* dealers might be protected from flooded and salvaged vehicle fraud. Don Hall, president of the Virginia Automobile Dealers Association, presented testimony on behalf of the NADA to the Senate Consumer Affairs, Product Safety and Insurance Subcommittee. Complete coverage is at www.nada.org/

In his testimony, Hall noted, "Any buyer should have pre-purchase access to information about significant vehicle damage that may affect safety, drivability, durability and market value." He also pointed out that each state and the District of Columbia registers vehicles differently, inviting fraud and making it easier for

unscrupulous rebuilders to have damaged vehicle titles "washed" in these states.

Even without enacting title branding legislation, the NADA recommended to Congress that states should carry forward prior brands when issuing new titles; brand registrations; title motor vehicles electronically; work more closely with DMVs, insurance companies, salvage auctions and the information technology industry to speed total loss information to consumers; and enact penalties to prevent attempts at circumventing disclosure.

In several recent speeches, NADA Chairman Jack Kain has called for the establishment of a **national title branding database** and for vehicle history and title information to be readily available so that dealers and their customers know what they are buying. "We will all benefit when complete title information gets to dealers and consumers more quickly," he said.

The NADA and Experian Automotive have established a hotline and e-mail services (800-509-5489 and stormsupport@experian.com), to provide NADA members with free branded title and other information to check vehicles for hurricane damage.

In a letter to the Environmental Protection Agency, the NADA expressed support for regulations that would control the purchase and use of automotive refinishing. The EPA has been gathering information from various sources throughout the collision repair industry as it prepares to draft tougher emissions rules for the refinish industry and implement them in the next few years.

The NADA continues to work to educate consumers about car-buying and financing and ownership. The association's "Smart Car Buyer's Guide: Getting the Most from Your Dealership" appeared in the Nov. 14 issue of Time magazine. It's also available at www.nada.org/ A copy will be included with the January 2006 issue of AutoExec magazine. To order additional copies of the guide for your customers, contact Naxhieli Acosta at nacosta@nada.org. Copies are sold in packages of 100 for \$39.95 each, plus tax, shipping and handling.

And as we reflect at year's end, let me wish all my fellow dealers a happy and joyous holiday season and a prosperous 2006.

GAP rates to rise?

Damage from this year's hurricanes and a steep depreciation in used-car values could force GAP insurance rates to jump an estimated 30 percent by next year. The projected increase

would push the average dealer price of GAP coverage to \$200 or more a policy. Dealers typically charge buyers \$500 to \$700 for the insurance.

IRS certifies Ford hybrids for tax deduction

The Internal Revenue Service has certified Ford's hybrid SUVs as eligible for the clean-burning fuel deduction.

The certification means that customers who buy either a model year 2006 Escape hybrid or Mercury Mariner hybrid in 2005 may claim a tax deduction of up to \$2,000, according to a report on FCN and the Auto Channel.

The Escape and Mariner hybrids join a select list of vehicles certified by the IRS. The 2005 Escape hybrid already appeared on the list of clean-fuel vehicles. Along with Ford and Mercury, the list includes only six other vehicles from Lexus, Toyota and Honda.

The deduction amount for the Escape and Mariner hybrids was determined after Ford showed the IRS the incremental cost related to the vehicles' electric motor and related equipment.

It is a one-time deduction and must be taken in the year the vehicle is first used, and it must be taken by the original owner.

The deduction does not apply to leased vehicles.

Take steps to avoid being a credit card fraud victim

Several dealers in recent months have reported being victimized by credit card fraud directed at their parts departments.

The incidents should remind dealers of the need to carefully scrutinize telephonic or other credit card orders from unfamiliar persons.

The following are some risk management measures that various organizations have recommended to reduce the risk of fraud:

- Take extra steps to validate each order. Don't accept orders without complete information, including full address and phone number;
- When taking orders, ask for the three-digit number imprinted on the signature panel of the credit card. This will help verify that the customer is in actual possession of the card. If the purchaser only has the 16-digit credit card number and the expiration date, he may not physically possess the card, signaling a potentially fraudulent transaction;
- Be wary of orders with different "bill to" and "ship to" addresses;
- Be extra cautious with transactions involv-

ing any of the following: first-time shoppers, orders placed by fax or e-mail (particularly those originating from a free e-mail address or an e-mail forwarding address), larger-than-normal orders, orders consisting of several of the same item, orders made up of "big-ticket" items, orders shipped "rush" or "overnight" and orders shipped to an international address. Do everything possible to validate an order before shipping any product to a different country;

- If suspicions exist about a card, call the credit card authorization center;
- If victimized by a credit card thief, contact the merchant processor immediately and inform the processor of the situation. Be advised that some credit card companies offer a safeguards program to protect against this risk.

The foregoing is not an exhaustive list of credit card fraud prevention measures. Rather, it is intended to alert dealers to recent reports of these occurrences and reinforce the need to include credit card prevention in employee training programs.

EPA may ease burden on above-ground oil-storage

The Environmental Protection Agency is proposing to reduce the burden on dealerships that store oil—fuels and new and used oils—in above-ground tanks and drums.

The National Automobile Dealers Association has led a push the last two years to exempt small facilities from having to develop a Spill, Prevention, Control, and Countermeasure (SPCC) Plan and have it certified by a professional engineer.

The EPA's existing rules cover all

dealerships with above-ground oil storage capacities above 1,320 gallons.

The new proposal still would require dealers with 1,320 gallons to 10,000 gallons of above-ground oil storage to have an SPCC Plan, but they would be permitted to self-certify, eliminating the costly expense of hiring a professional engineer.

The EPA also has proposed to extend its SPCC compliance



deadlines. Currently, regulated facilities need to amend their plans

by Feb. 17 and implement those changes by Aug. 18.

Under the proposal, covered dealerships would have until Oct. 31, 2007, to both amend and comply with their SPCC plans.

In addition, the EPA has issued an inspector guidance document addressing several SPCC compliance issues that dealers face, including when

secondary containment is necessary, oil water separators, and how to put together a model plan.

Dealers who have above-ground oil storage greater than 1,320 gallons are encouraged by the NADA to consider waiting to amend their SPCC plans until the EPA has finalized its regulatory relief proposal.

Questions on this matter can be directed to the NADA's Regulatory Affairs department, by telephone at 703-821-7040 or by e-mail at regulatoryaffairs@nada.org