Reading & Response

March 2008

Oregon Low Emission Vehicle Rules Take Effect With 2009 Model Year

Late in 2005, the Environmental Quality Commission adopted rules requiring that cars and trucks sold in Oregon must meet California's vehicle emission standards. The rules apply to new passenger cars and trucks up to 14,000 GVWR beginning with the 2009 model year. Oregon's rules included the new "Pavley" provisions to reduce greenhouse gas emissions.

Before California emission standards can be enforced, the Clean Air Act requires the U.S. EPA to approve each new set of provisions by granting them a waiver. Last December, the EPA denied the waiver for the greenhouse gas limits. EPA is being sued to change their decision, and many legal observers expect the courts will eventually overturn EPA's action. However, regardless of what happens to the greenhouse gas limits, the remaining California emission requirements have already been granted waivers and will not be affected.

That means that beginning with the 2009 model year, new cars and trucks sold and registered in Oregon must still be certified to California's emissions standards. These standards include tighter limits for Non Methane Organic Gases (NMOG) and requirements for Zero Emission Vehicles.

Oregon's rules apply only to new vehicles. Any vehicles with more than 7500 miles are exempt. Also, California's emission standards for motorcycles and off-road vehicles were not included with the regulations adopted by Oregon.

Questions or comments may be directed to Dave Nordberg at the Oregon Department of Environmental Quality.

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NIADA Legal Legislative & Regulatory Mid-Year Update

By: Keith Whann

NIADA General Counsel

Federal Legislative Activity

The Passenger Vehicle Loss Disclosure Act

S. 545, titled "The Passenger Vehicle Loss Disclosure Act" is similar to the Measures introduced at the end of the 109th Congress. The Bill would ensure that certain information regarding vehicles declared a total loss by an insurer or self-insurer are disclosed to the public in a commercially reasonable and electronically accessible manner. The information that would have to be disclosed includes the vehicle identification number of the vehicle, the date of declaration or determination of the total loss, the odometer reading on that date, a statement as to the primary reason for the declaration or determination of total loss, and a statement as to whether one or more airbags were deployed. Insurers oppose S. 545 because they claim it does not clearly define "total loss" and that it would be expensive to maintain a data base containing the required disclosures. We support the Measure, but recognize that there are other issues, such as the carry forward title brands, that could be addressed. A brand carry-forward provision is unlikely, however, due to the uproar surrounding the Real ID ACT implementation and the consensus viewpoint concerning unfunded state mandates.

CAFÉ Legislation

House Speaker Nancy Pelosi would like to get a vote on energy legislation, including controversial new vehicle emissions standards, before Congress goes home for the Christmas recess. Although a formal conference committee was never appointed, House and Senate staffers have been meeting for several weeks to try to reconcile the Senate Energy Bill passed in June and a House Bill passed in August. The Senate Bill, which Pelosi supports, calls for a 40 percent increase in fuel economy by 2020 to a combined 35-mpg for both cars and trucks. CAFE standards were left out of the House Energy Bill because more than 160 members endorsed an alternative proposal called "Hill-Terry" backed by most of the industry. That proposal provides automakers with more time and flexibility to meet the requirements, which range between 32 mpg and 35 mpg by 2022.

Rent-To-Own Reform Act

The RENT-TO-OWN Reform Act of 2007 is a Bill to amend the Consumer Credit Protection Act, to protect consumers from inadequate disclosures and certain abusive practices in rent-to-own transactions, among other purposes. This is modeled after legislation that is in effect at the State level and should not pose a problem for the industry as drafted.

Arbitration Fairness Act

The Arbitration Fairness Act of 2007 would amend Chapter 1 of Title 9 of the United States Code, more commonly known as The Federal Arbitration Act. The Bill states that Mandatory arbitration undermines the development of public law and is a poor system for protecting civil and consumer rights. The Bill would prohibit a predispute arbitration agreement from being valid in a consumer dispute, that being where the subject of the transaction is for personal, family or household use.

Right To Repair Legislation Returns

Right to Repair legislation is back on the forefront after the House Energy and Commerce Chairman reintroduced a Bill (HR 2694) that would require automobile manufacturers to disclose to vehicle owners, repair facilities, and the Federal Trade Commission information necessary to diagnose, service or repair vehicles. Similar Legislation has been introduced three times since 2001 without success. This time, a provision that would have allowed lawsuits to be brought against manufacturers if sufficient information is not provided has been removed.

Federal Regulatory Developments

FTC Used Car Rule

The FTC is conducting a review of the Rule. We have worked with them providing information from our Market Report and other sources on the Industry to determine the time and financial burdens on dealerships to comply with the Rule. We have also spoken with them about possible ways to deal with "balance of manufacturer", "third party" and "implied warranty" issues that exist in the industry.

IRC§263(A) – The UNICAP Rules

The UNICAP Rules have existed since section 263A was added to the Code in 1986. Among other things, section 263A and its implementing regulations require taxpayers with production activities to capitalize certain costs associated with their inventories. Congress added this provision to ensure that producers, who already were required to capitalize hard costs associated with their inventories, also capitalize associated indirect costs.

Prior to the recent audits, we are not aware of a single instance where the Service classified a dealer as a *producer*, despite completing thousands of dealer audits since the inception of the UNICAP Rules. In fact, the Service has approved hundreds of dealer applications for a change in accounting method (IRS Form 3115) authorizing dealers to be treated as retailers who can utilize special allocation and *de minimis* rules that do not require the capitalization of these costs. Against this backdrop, IRS field examiners nonetheless have begun classifying dealers as producers. They have latched on to the inclusion of the term "install" in the Code's definition of "produce" to expand the producers' provision to retail businesses that perform service work involving parts in their inventory.

It would be difficult to overstate the detrimental economic impact that this change may cause for dealers and other industries. A dealer can be determined to be a *producer* or a *retailer with production activities*. We are working to determine if there are exemptions (dealing either with the activities engaged in or size) that could apply to independent dealers.

Real ID Act Implementation Remains Controversial

On May 11, 2005, Congress passed the Real ID Act thereby creating national standards for the issuance of state driver's licenses and/or identification cards that had to be in place by May 11, 2008. According to an analysis that was prepared based upon findings from a survey conducted by the National Governors Association, the National Conference of State Legislatures and the American Association of Motor Vehicle Administrators, implementation of the Real ID Act could cost states more than $11 billion over five years. As a result, the States asked that the mandatory implementation date be extended and that the Government provide the funds and electronic systems necessary for States to comply.

In response to the States request, the U.S. Department of Homeland Security issued a temporary reprieve to the states allowing them to delay implementation of the strict requirements until December 31, 2009. The Administration still expects States to begin issuing compliant ID's in May of 2008, but will be expected to replace all 245 million licenses held by Americans on a "reasonably prompt basis" over five years. States that can justify a request for more time could also be granted additional waivers.

The REAL ID Act remains in the news and has become controversial due to concerns about privacy issues and funding. Nationwide costs of complying with the Act are estimated at 11 to 25 billion dollars over 10 years, and concern has been raised that state DMV offices will be forced to pull resources from other areas, such as title processing and registrations, to comply. To date, Congress has appropriated only 40 million dollars for REAL ID programs. In July, a proposal to provide 300 million dollars in federal funds to help states implement the Act was defeated in the Senate. The failure of Congress to provide significant financial assistance for states to comply with Real ID Act will likely increase the call by states to either further delay or dismantle the federal program.

New "MPG" Ratings May Apply to Older Model Vehicles

Beginning with model year 2008 vehicles, the EPA is mandating the use of a newly designed fuel-economy label similar to that found on the Monroney Sticker for light-duty vehicles. The EPA's goal is to ensure that the information on the labels more accurately reflect real-world driving conditions. The EPA adopted the new method last December to give more weight to driving factors like higher speeds, harder acceleration and greater use of accessories like air conditioning. It recently has indicated that it will apply the new method to older cars and trucks as well. Revised ratings for older model vehicles may help Dealers because they will make comparisons with new vehicles more valid. Dealers should be prepared to advise consumers that their actual mileage will still vary depending on how they drive and maintain their vehicles and to caution them when comparing newer and older model vehicles.

New Air Bag Regulations On The Way

As of September 1, 2007 all automakers must place frontal and side crash test and roll over rating information on vehicle window stickers. Additionally, in one of the most significant safety regulations in recent decades, automakers will have to equip all vehicles with side curtain air bags that provide head and torso protection in dangerous side-impact crashes by 2013. While side-impact crashes account for only 9 percent of crashes, they account for more than 20 percent of auto fatalities. For the first time, NHTSA will require automakers to provide head protection for rear seat passengers.

Agencies Issue Final Rules on Identity Theft Red Flags

The Federal Trade Commission and the federal financial institution regulatory agencies have published final rules on identity theft "red flags" and address discrepancies. The Final Rules implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003.

The Final Rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an Identity Theft Prevention Program (Program) for combating identity theft in connection with new and existing accounts. The Program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft and enable a financial institution or creditor to:

1. Identify relevant patterns, practices, and specific forms of activity that are "red flags" signaling possible identity theft and incorporate those red flags into the Program;
2. Detect red flags that have been incorporated into the Program;
3. Respond appropriately to any red flags that are detected to prevent and mitigate identity theft; and
4. Ensure the Program is updated periodically to reflect changes in risks from identity theft.

The agencies also issued guidelines to assist financial institutions and creditors in developing and implementing a Program, including a supplement that provides examples of red flags. The Final Rules require users of consumer reports to develop reasonable policies and procedures to apply when they receive a notice of address discrepancy from a consumer-reporting agency.

The final rulemaking was issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. The Final Rules are effective on January 1, 2008. Covered financial institutions and creditors must comply with the Rules by November 1, 2008.

Unlikely Allies Challenge NHTSA Tire Rules

Public Citizen, a consumer-advocacy group, and several tire manufacturers have joined together to challenge new rules adopted by the National Highway Traffic Safety Administration (NHTSA) mandating driver alerts for under-inflated tires. The mandatory tire-pressure monitors are required pursuant to a Law adopted in 2000 in the wake of the recall of more than 6 million Bridgestone/Firestone tires. The 2nd U.S. Circuit

Court of Appeals in New York subsequently threw out an initial regulation, upholding a challenge from the Public Citizen Group claiming that the proposed new rules were not strict enough. The latest version of the rule adopted by NHTSA in 2005 would require that new vehicles include dashboard lights indicating when tires are 25 percent under-inflated, but it only applies to original-equipment tires, not replacements. The Public Citizen Group and manufacturers maintain that the 25 percent standard could result in tire failures without the driver ever seeing a warning light.

Emissions Rules

The Bush administration is moving ahead on emissions rules to regulate tailpipe emissions as an air pollutant under the Clean Air Act. The EPA is currently writing broad new rules to limit fuel consumption as a result of President Bush's so-called "20-in-10" plan to reduce gasoline consumption by 20 percent in 10 years.

California Sues Federal EPA Over Auto Emissions

The State of California sued the federal government last week to force a decision about whether the state can impose the nation's first greenhouse gas emission standards for cars and light trucks. The central issue in the state's lawsuit against the Environmental Protection Agency is California's nearly two-year-old request for a waiver under the federal Clean Air Act to allow it to implement a 2002 state anti-pollution law regulating greenhouse gases. The EPA indicated last summer that it would make a decision by the end of this year, however, California's position is that the longer it takes to reduce these emissions, the more costly and harmful the impact will be on California. Automakers, and the industry as a whole, oppose California's effort or any other scenario in which emissions regulations vary from state to state.

Other Activity Of Interest

Battle Over Tailpipe Emissions Takes Center Stage

The automobile industry's battle to overturn California's Greenhouse Gas Emissions Rule on cars and trucks shifted to a new venue this year - a Vermont courtroom. The Automobile Industry began its Federal lawsuit challenging the adoption of strict limits on vehicle emissions of carbon dioxide, a main greenhouse gas. Vermont is one of 9 states that followed California's lead in mandating that automakers meet tailpipe emissions limits beginning in 2009 that increase annually to cut emissions up to 40 percent by 2016. The central issue in this case is whether states have the power to regulate carbon dioxide emissions in motor vehicles or whether they can only be regulated on a federal level. US District Court Judge William Sessions ruled in September that federal regulations did not preempt state laws that require reductions in carbon emissions. Various auto manufacturers recently appealed the decision.

Hybrid Sales On The Rise

Sales of new hybrid vehicles in the United States are on the rise, up 49 percent in the first seven months of this year, due largely to a boom in sales in the Midwest, which rose 57 percent. Recent predictions indicate total U.S. new hybrid sales will exceed 300,000 this year, comprising just over 2 percent of all sales. U.S. consumers bought 254,545 hybrids in 2006.

Alternative Energy Sources for Vehicles

There are currently 10.5 million alternative fuel vehicles on the road today compared to 9 million in 2006. These vehicles vary by the alternative fuel source that powers them. The most popular being hybrid electric technology, ethanol-blended fuels and biodiesel. Hybrid car sales alone are up 86 % nationally. For flex-fuel vehicles to be a viable alternative, there must be sufficient distribution and availability of E85. At present, however, only 1,100 of the nations 170,000 fueling stations offer E85. Ethanol production has been on the rise, however, and the Energy Department's recent announcement that it plans to spend 385 million dollars on six biorefineries that will produce cellulosic ethanol from biomass sources indicates that ethanol may become more widely available. While production of ethanol, the nations No. 1 alternative fuel, has exceeded expectations, it also has hit a roadblock, conveyance. Many feel the need to lay pipelines dedicated exclusively to ethanol is key to reducing U.S. oil dependency.

2008 Fuel Economy Guides Available

The U.S. Department of Energy and the Environmental Protection Agency has begun distributing the 2008 model year Fuel Economy Guide providing consumers with information about fuel economy and the benefits of using more fuel-efficient vehicles. This years guide contains fuel economy estimates based on updated EPA calculation methods. Copies of the Guide will be available at the NIADA website.

Kelly's Korner

The Magic of a Change of Face

Many dealerships are downsizing personnel, and in some cases, they are eliminating the F&I position or changing the job into an administrative position.

I advocate having a change of face, someone other than the sales consultant, to complete the F&I presentation with the customer.

While many senior managers are concerned about customer satisfaction, they sometimes overlook the fatigue level of the sales personnel when mapping out new business models.

Sales Consultants

It often takes all the energy a person can muster to complete all the steps to a sale. By the time he acquires the customer's approval, the sales representative is mentally exhausted. When anyone becomes fatigued, fear becomes an obstacle. The sales consultant may fear any additional items or products will jeopardize the sale. When in reality, F&I products and services help ensure long-term satisfaction with the purchase. Fear halts presentations. Fear presents excuses. And fear costs the dealership productivity and profitability.

Dealerships need sales personnel to focus on prospecting, setting appointments, greeting, interviewing, presenting the appropriate products, demonstrating products, and completing the write-up process and closing deals. If this list sounds like a lot, it is. It takes discipline to do this every day.

Good sales people are often not good with documentation. That is why the best process brings in a different person to complete the F&I process.

Change of Face

A change of face in the deal brings in new energy and a new focus for both the customer and the dealership. Often the customer and the sales person have become friends and the sales person has bought the customer's point of view of how she cannot spend any more money. Yet, the same customer is back later with an attorney asking why the service agreement was not explained to her when she purchased the vehicle, and who is going to pay for the transmission that needs to be replaced?

A different person should make the presentation about all the extras. The customer will then be in a position to make an informed choice about what protection plan(s) she wants and how she is going to pay for them.

Documentation

Professional F&I presenters are detail-oriented, in addition to possessing good communications skills. They realize that the deal is not complete until all the paperwork is in and the money is collected. F&I professionals also track the trade paperwork to ensure timely receipt of the title to the trade.

If the job sounds administrative, some of it is. Regardless of the administrative duties, professional F&I people focus on the customer who is in front of them. They understand that at that moment no one is more important. They have learned that if customers have a positive experience during the F&I process, they will refer their family and friends to the dealership.

F&I is a keystone in building customer retention. I strongly recommend that each of you take the time to evaluate your business model and retain the change of face platform in delivering the F&I message to your customers.

Study: History Reports Can Help Speed Up Sales

DALLAS and CENTREVILLE, Va. – According to a recent report, dealers can sell vehicles faster online if a Carfax vehicle history report is included.

A study by Liquid Motors and Carfax indicated that it takes three fewer days for vehicles to sell online when a history report is provided.

Additionally, eBay Motors auctions are twice as likely to end in a sale when a report is included, officials noted.

"Liquid Motors is fully committed to providing our dealer-customers with the tools necessary to maximize their results," said Michael Daseke, president of Liquid Motors.

"Including a Carfax report with every vehicle listing increases turn and reduces your cost per car," Daseke continued. "Dealers see a higher profit on each car they sell and greater success with their online sales."

According to the company, dealers can link Carfax reports to listings on such sites as eBay Motors. Officials noted that consumers bid more frequently on vehicles with the Carfax reports on eBay's auctions.

"Carfax Vehicle History Reports make dealers more money," said Larry Gamache, communications director at Carfax. "This study shows that our dealer customers have five times as many people keeping track of their vehicle auctions and get 50 percent more bids by offering buyers a free Carfax Report."

"When you give buyers what they want, you make more money," Gamache added.

For more information, visit www.carfax.com.

The Sub-prime Market is growing and women make up a large percentage of that demographic, are you addressing them properly?
By Peter Martin

Women face many challenges when they're buying a car. Or at least they think they do. Some were in past relationships where their spouse bought the cars and today, for the first time are purchasing by themselves; while others may have had a bad experience with a salesman or the F&I manager. And for a growing number of female consumers, a major hurdle in the car buying process now involves credit problems.

Today over 70% of the population has a credit blemish that can affect their ability to finance a vehicle. And current market conditions are making it harder for many consumers, particularly women, to qualify for a traditional loan. Presently, the home loan credit market is reeling. Credit problems once confined to high-risk mortgage borrowers are spreading across the entire lending landscape.

Acording to USA Today, $300 billion in sub-prime adjustable rate mortgages will reset to higher interest rates, which could result in tens of thousands of consumers loosing their homes or being forced into bankruptcy. But why should the car industry, and you, care about what happens in the home loan market?

Due to these unforeseen circumstances in the housing market, many consumers who once had "good" to "excellent" credit are becoming increasingly "credit challenged". That means more consumers, including women, are turning to sub-prime loans to purchase cars. A sub-prime borrower is simply a person with bad credit - typically a consumer with a credit score of less than 620.

The good news is, there are still plenty of credit grantors who are eager and willing to loan money to people with bad credit. The Federal Reserve estimates the market for sub-prime auto loans has more than quadrupled in the past decade. And some industry leaders believe sub-prime loans total around $125 billion a year.

Naturally, there's a catch. The interest rates for sub-prime borrowers are much higher, often between 17 and 25 percent on auto loans. But even with these higher rates, the sub-prime market continues to boom – particularly for women. Some studies estimate nearly one-third of female borrowers receive sub-prime loans of all types, compared with about one-quarter of male borrowers.

Another contributing factor influencing credit is our high divorce rate. Estimates show that half of all marriages end in divorce. And while not good for either party, divorce can hit women consumers especially hard.

First, a woman's income is often significantly less than her male counterpart. And a newly divorced woman who has been out of the workforce for several years often earns even less.

More divorce means a higher number of single mothers potentially facing a triple punch of having fewer hours to work, lower earning power and a young family to support. Even with child support and alimony, single mothers are often the most credit challenged. Also, as the population grows older, you'll see an increasing number of widows coming in for the first time by themselves to purchase cars. In some instances their finances may have suffered with the death of their spouse.

Other reasons women experience credit problems are suffocating credit card debt, a job loss or a pay cut. In a recent survey 63 percent of people sited credit card debt while 38 percent blamed a job loss or pay cut on recent financial hardships.

And last year, one out of every 100 families in this country was affected by bankruptcy, which makes qualifying for a loan difficult – but not impossible.

But don't let all of the doom and gloom talk scare you. Today, banks, credit unions, finance companies and your own F&I people, have alternate financing programs available and are successfully making loans to people with flawed credit. Many people, who historically wouldn't qualify for an auto loan, can now get one.

If anything, the tight credit market may present an opportunity for you. Build a relationship with your female customers by understanding the credit market, finance options and listening to her specific credit situation. Remember, you're her partner; you're not there to sell her a car, but rather to help her buy a car!

The topic of effectively selling to the sub-prime market and the female consumer is fascinating and can be a lucrative new opportunity to many in the automotive industry. If you are planning on attending the NADA convention in February, please join me for my seminar on How to effectively capture the Sub Prime Market. This seminar will help you develop sales and marketing campaigns designed to attract this segment of the market.

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ARTICLE:	QUESTION
OR Low Emissions	Oregon low emissions rules apply only to new vehicles. Any vehicles with more than 7500 miles are exempt. Also, California's emission standards for

motorcycles and off-road vehicles were not included with the regulations adopted by Oregon.

(1) True _____ False ______

AskPatty.com A sub-prime borrower is simply a person with bad credit – typically a consumer with a credit score of less than 620.

(2) True _____ False _____

History Reports Reports show that dealers can sell vehicles faster online if a Carfax vehicle history report is included.

(3) True _____ False _____

NIADA LLR Identity Theft Red Flags final rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an Identity Theft Prevention Program for combating identity theft in connection with new and existing accounts.

(4) True _____ False ______

Kelly's Korner A change of face in the deal brings in new energy and a new focus for both the customer and the dealership.

(5) True ____ False _____

AskPatty.com Some studies estimate nearly on-third of female borrowers receive sub-prime loans of all types, compared with about one-quarter of male borrowers.

(6) True ____ False _____

NIADA LLR Identity Theft Red Flag rules were effective on Jan. 1, 2008. Covered financial institutions and creditors must comply with the Rules by Nov. 1, 2008.

(7) True ____ False _____

I certify to OIADA that I have personally read these articles in The Oregon Dealer News Magazine
Continuing Education Packet # 3-08