

NEWS BULLETIN

Maine Automobile Dealers Association

180 Civic Center Drive
DIAL 623-3882

P. O. Box 2667

Augusta, Maine 04338-2667

e-mail:info@maineautodealers.com

FAX 623-2318

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DISTRIBUTION

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MAY 1 IS "RED FLAGS" COMPLIANCE DATE

The Federal Trade Commission's "Red Flags" Rule becomes effective on May 1, 2009. This rule requires dealers, as well as other financial institutions and creditors, to review their day-to-day operations and develop a comprehensive written program, together with training, to prevent identity theft.

The first and most important obligation of the dealership is to develop a written identity theft protection program that contains reasonable procedures to identify, detect, and respond to "Red Flags" which may indicate the possibility of an identify theft situation. The development of this written compliance program must involve senior management in a review of all dealership procedures and operations, and either the dealer or the dealership's Board of Directors must approve the initial written program and assign implementation duties to a person with authority to make the program work. Businesses are also required to periodically review their program to make sure that any problems or new potential risks are reflected in the document. The training of dealership personnel and the consistent oversight of dealership operations are the central elements of this program.

One of the major ways that dealerships can work to prevent identity theft is to verify the identity of the person who is buying a vehicle. This is not a new concept, as other federal requirements essentially mandate the same process of checking a government-issued, picture ID to match the name and information pertaining to the person who is purchasing a vehicle.

Like the Privacy Rule and the Safeguards Rule that have preceded the "Red Flags" rule, the entire effort is meant to help ensure that the person purchasing from you is really who they represent themselves to be, that you protect the information that the customer provides you, and that you tell the customer that you will be protecting that information. A consistent and reasonable effort to meet the goals of these programs is what dealerships should address. Significant detail is provided in the NADA Management Guide on this subject: FTC Red Flags and Address Discrepancy Rules (L50).

Enclosed with this bulletin is a document which dealerships might use to organize their own individual written compliance program. This is not a template which everyone can just copy and use. Rather, it is a document which might be used as a guide as you reflect on your own dealership policies in developing an identity theft protection program to comply with the law.

NEW I-9 FOR FEDERAL EMPLOYMENT CERTIFICATION

Employers are now required to use a new Employment Eligibility Verification Form I-9 to verify the identity and work authorization of all new hires. No previous edition of Form I-9 will be acceptable for employees hired after April 3, 2009. The revised date on the Form I-9 you should be using is 2/2/09. Since 1986, federal law has required employers to verify the identity and work authorization of newly hired employees while completing a Form I-9. The requirements include a review of a document that illustrates both identity and work authorization, or an examination of a combination of identity and work authorization documents. Most significantly, for the new requirements, all documentation offered for I-9 purposes must be **unexpired** at the time the document or documents are presented. Additional information, and the new form, can be found at <http://www.uscis.gov/portal/site/uscis>.

2009 MADA CONVENTION

MADA's annual meeting and convention this year will be held over the weekend of June 26-28, with the Samoset Resort in Rockland as our host. The 2009 event will incorporate a variety of educational, recreational and social opportunities for dealers and guests. Significant industry events, this year's session of the Maine Legislature, pending referendum questions affecting the automobile industry, and tips for improved dealership operations will all be part of our convention programming. On the lighter side, the beautiful coastal setting of the Samoset and the surrounding towns of Camden, Rockport, Rockland and Owl's Head offer attendees some interesting opportunities. Details and registration material will be mailed to you in the next few weeks. Plan now to attend -- set the weekend of June 26-28 aside for a great time on the mid-coast of Maine.

GEORGE WEST WASTE OIL SITES

2009 has been an interesting year if your dealership is a Potentially Responsible Party (PRP) at one or more of the George West waste oil sites at Plymouth, Casco or Ellsworth. To complete the West family impact, the original site at Wells is complete with respect to PRP liability, and the Presque Isle site has yet to receive much attention. The following paragraphs briefly describe the regulatory, legal and legislative activity.

Plymouth is rapidly reaching a point where EPA, Maine DEP and the PRP Executive Committee may agree on the contents and cost of a final remedy and ongoing monitoring, as well as a document to be signed by the PRPs. The Legislature's FAME program is also moving ahead on the path to revenue bond issuance which is designed to pay for most Maine PRP (including dealerships) liability - provided sufficient funding is received through the fees on new motor oil. MADA staff and some dealers attended a PRP meeting in Bangor last month, and another is scheduled for early May to discuss the final hurdles in the quest for an ultimate resolution at this \$21 million site.

Casco and Ellsworth PRPs were invited to DEP information meetings, also attended by MADA staff and attorneys, at which DEP outlined its cleanup actions to date, and presented its concept for final resolution of PRP liability at these sites (total cost at each site is approximately \$2.5 million). The Legislature is considering several proposals dealing with the FAME funding and DEP administrative issues at the Casco and Ellsworth locations.

Red Flags Identity Theft Prevention Program

Dealership Name

Identity theft is a serious national problem faced by consumers and businesses alike. Both are potential victims and can suffer serious financial harm at the hands of identity thieves. To combat this very real threat, this dealership maintains strong policies and procedures designed to minimize the risk.

This document creates a Red Flags Identity Theft Prevention Program designed to comply with rules issued by the Federal Trade Commission and reflects the dealership's good faith efforts to reduce the potential for identity theft. This document and the Program it creates is an administrative policy only. It does not create a warranty, representation, or contractual obligation in favor of any person or group.

Approval and Management

This Red Flags Identity Theft Program was approved by the dealership board of directors - or if none - by the dealership's senior management.

The designated Program Manager who is a senior manager at the dealership and charged with overall Program management and administration is:

Transactions at Risk

Program Manager Name

The dealership reviewed its transactions and determined that among those subject to the Federal Trade Commission rule, there is a reasonably foreseeable risk of identity thieves targeting only its consumer motor vehicle installment sales and lease transactions.

Relevant Red Flags

"Red Flags" are indicators of potential identity theft. Their presence does not necessarily mean that identity theft has occurred. However, they may not be ignored and must be resolved before a consumer credit or lease transaction can be completed.

It may not be possible to look for every Red Flag in all consumer credit or lease transactions. For example, a number of the Red Flags listed below pertain to information and alerts obtained from a consumer credit reporting agency. Our dealership may not always obtain such a report.

The Program Manager is responsible for monitoring the list of Red Flags and periodically updating it. The dealership has identified the following Red Flags as currently relevant to our consumer credit and lease transactions.

- Identification documents provided by the customer appear to be altered or forged.
- The photograph or physical description shown on an identification document does not match the customer's appearance.
- A credit application appears to be altered or forged.

- A customer fails to provide all required personal identifying information on a credit application or in response to notification that the application is incomplete.
- A consumer reporting agency provides a Fraud or Active Duty Alert.
- A consumer reporting agency provides a Credit Freeze Notice.
- A consumer reporting agency provides an Address Discrepancy Notice.
- Personal identifying information provided by the customer is inconsistent when compared against other information sources used by the dealership. For example, the address on the credit application does not match any address in the consumer report.
- Customer provides inconsistent personal identifying information. For example, the credit application states that the customer owns his home but the residence address reflects an apartment number.
- Dealership is notified by a customer, financial institution, identity theft victim, law enforcement authority, or other person that a person posing as a credit or lease customer is really an identity thief.
- A customer requests to execute a motor vehicle installment sales contract or lease and take delivery of the vehicle off site at a location other than the dealership's facility.
- A co-buyer or co-lessee is included in the vehicle credit sale or lease but is not present at the dealership facility to sign the installment contract or lease.

Detecting Red Flags

Before entering into a consumer installment sales contract or lease, the dealership:

- Obtains, inspects, and photocopies the customer's current driver's license or other government issued photo identification.
- Examines the identification document for signs of alteration or forgery.
- Compares the photo and physical appearance information on the identification with the customer's in-person appearance.
- Obtains the customer's complete signed credit application.
- Reviews the credit application for completeness and indications of alteration or forgery.
- If the dealership obtains a consumer credit report on the customer:
 - Compares the address information on the identification document with the information provided in the consumer credit report.
 - Checks for a Fraud or Active Duty Alert.
 - Checks for Credit Freeze Notice.
 - Checks for an Address Discrepancy Notice.
 - Reviews the report for inconsistencies with the credit application.
- Assumes that the installment sales contract or lease will be signed and delivery will occur on-site at dealership's facility. Be alert to any effort by the customer to request or steer the

transaction toward having the co-buyer or co-lessee sign documents off-site.

Responding to Red Flags

Detection of a Red Flag does not necessarily mean identity theft is involved. If a dealership employee detects one or more Red Flags as a customer enters into an installment sales or lease transaction, the employee shall notify his or her manager.

If the Red Flag is a Fraud or Active Duty Alert, do not proceed with the transaction until both of the following steps have been satisfactorily completed:

- Contact the customer using the telephone number or other means of contact stated in the Alert, if any, and obtain authorization to proceed with opening the account.
- Take all reasonable steps to verify the customer's identity and that the transaction will not result in identity theft.

For all other Red Flags including a Notice of Address Discrepancy appearing on a consumer report, the employee and manager will investigate the Red Flag by obtaining additional information from the customer or third parties.

Unless a determination can be made after reasonable investigation that there is no reasonably foreseeable risk of identity theft, the dealership will not enter into an installment sales contract or lease with the customer.

Training

Dealership personnel will receive training, as necessary, to effectively implement the Program. The training will include, at a minimum:

- Distributing a copy of this Program to all employees having duties that may involve using consumer reports or closing retail installment sales or leases.
- Describing to these employees the policies and procedures set forth in the Program.
- Emphasizing the importance the dealership places on complying with the Program and ultimately preventing identity theft.

Reports and Periodic Updates

The Program Manager is responsible for ongoing reports to senior management and the dealership board of directors. The reports should address:

- The overall effectiveness of the Red Flags policies and procedures.
- Significant incidents involving identity theft and the dealership's response.
- Recommendations for improving the Red Flags Program.

These reports should be made continually on an ad hoc basis – but at least annually. Unless otherwise directed, the reports may be made orally or in writing.

The Program Manager is responsible to review, assess and update the Program periodically as necessary based on new regulatory guidance, the dealership's experience with identity theft, new identity theft schemes, new identity theft detection methods and potential new dealership transactions covered by the Federal Trade Commission identity theft rules.