

NEWS BULLETIN

Maine Automobile Dealers Association

180 Civic Center Drive P. O. Box 2667 Augusta, Maine 04338-2667 DIAL 623-3882
e-mail:info@maineautodealers.com FAX 623-2318

2014-11

DISTRIBUTION

- General Manager
- Office Manager
- Parts Manager
- Sales Manager
- Service Manager

THE DYNAMICS OF RECALLS HAVE CHANGED

Tens of millions of motor vehicles become subject to new federal safety recalls each year. The number of safety recalls has risen exponentially since late 2013, along with the number of vehicles covered by those recalls. Why? Among other reasons, vehicle manufacturers are gathering more information sooner which, when analyzed, can lead to safety defect or non-compliance determinations. Importantly, dealers play a critical role in seeing that as many recalled vehicles as possible are remedied, consistent with OEM instructions.

The attached explanatory sheets are designed to respond to several questions dealers are asking about how best to handle recalls impacting new and used inventory and service vehicles. It also highlights the fact that the National Highway Traffic Safety Administration has developed a VIN-searchable safety recall data base which can be found at www.safercar.gov/vinlookup, where a consumer FAQ and other recall-related information also are available.

Questions concerning federal safety recalls or the new VIN-searchable data base may be directed to NADA Regulatory Affairs at regulatoryaffairs@nada.org or 703.821.7040.

SAFETY INSPECTION LICENSE & OUI CONVICTION

An OUI conviction will affect the technician's ability to perform State of Maine safety inspections. In order to perform inspections the technician must have a valid drivers' license. During a technician's term of license suspension, the technician will not be allowed to perform inspections. The technician must report the violation to the Maine State Police, Motor Vehicle Inspection Unit, at 624-8949. The technician's license will be placed inactive during the term of suspension. Once the drivers' license is reinstated by the Bureau of Motor Vehicles, the technician will be allowed to perform safety inspections again.

TELEMARKETING VIOLATIONS

Earlier this year the Federal Trade Commission (FTC) reached a multi-million dollar settlement with a company for violations of the Do-Not-Call (DNC) restrictions under the FTC's Telemarketing Sales Rule. Telephone calls the company made to consumers on lists purchased from "lead generators" (who had represented they had consent from the consumers for those calls) were in violation of the FTC Rule because the "lead generator" company did not have consent, and many of the phone numbers were on the national and company-specific DNC lists.

This is a valuable reminder that the dealers - not the vendor who supplied the information - is likely to be held liable for any DNC or similar violation related to leads purchased from a third party vendor. The FTC warns that companies that use lead generators must exercise due diligence when buying lists of phone numbers or else they can be held responsible for illegal telemarketing. All telemarketers calling consumers in the United States are required to periodically download the numbers on the Do Not Call Registry to ensure they do not call those who have registered their phone numbers. The first five area codes are free. Telemarketers must subscribe each year for access to the Registry numbers.

THE COST OF LATE REPORTING WORKERS COMPENSATION CLAIMS

Every year, late reporting of on-the-job injuries costs employers millions of dollars. In fact, some insurers estimate that workers compensation injuries reported more than seven days after the incident increased medical costs and wages by more than 50 percent - compared to claims reported within 24 hours. Maine law requires claims to be reported to the Workers Compensation Board within 7 days, or the business is fined. Prompt claims reporting can definitely make a difference on your workers compensation bottom line! To help protect your dealership from expensive and protracted workers compensation claims, consider implementing the following injury-reporting process: Encourage the employee to promptly inform supervisors whether he or she has had an injury, a close call, or witnessed another employee being injured. Take a proactive, common sense approach to controlling workers compensation costs!

ONLINE DUPLICATE TITLE

Maine's Bureau of Motor Vehicles (BMV) has begun work to provide dealerships and Maine citizens with an Online Duplicate Title process. The development of this process is part of the continuing march by the BMV Title Section toward a full electronic option. As with most state agency initiatives, it battles for slim financial resources, so progress on the full electronic option is slower than many would like, but steady. It is expected that the Online Duplicate Title process will be available by the end of calendar year 2014.

NEWS BULLETIN

Maine Automobile Dealers Association

180 Civic Center Drive P. O. Box 2667 Augusta, Maine 04338-2667 DIAL 623-3882
e-mail:info@maineautodealers.com FAX 623-2318

2014-13

E-CIGARETTES AND YOUR SMOKING POLICY

Conversation abounds concerning the harm or benefit of e-cigarettes, the vaporization of nicotine. This article does not enter that debate. However, some dealerships have inquired as to the ability or need to incorporate e-cigarettes into their smoking policy. The answer is YES, you may include this option, but it is not mandatory. This subject of including e-cigarettes will likely be a Legislative discussion in 2015.

MEMBERSHIP GOLF TOURNEY IS SEPTEMBER 4

Your Association's 23rd annual membership golf tourney will be held on Thursday, September 4, at the Purpoodock Club in Cape Elizabeth. A shotgun start at 12:00 noon follows a deli luncheon offering available at 11:00 a.m. At the conclusion of the 18 hole scramble of 5-some fun and games, a social hour and dinner buffet will precede the awarding of prizes. 26 MADA dealerships are currently registered - there is still room for you and/or your group. If you would like to enjoy the day, whether by yourself or with others, please call Steve Piper at your MADA office.

PARTS SALES DELIVERED OUT-OF-STATE OR OUT-OF-COUNTRY

A dealership which fills an order for parts, and delivers those parts outside the boundaries of the State of Maine, does NOT need to collect Maine sales tax on those parts. This exemption from Maine sales tax applies because the delivery of the parts takes place outside the State of Maine. The exemption also applies whether the parts are delivered to the purchaser via common carrier (U.S. Mail, FedEx, UPS, etc.) or via your dealership delivery vehicle. Maine Revenue Services states that if delivery is by common carrier, the dealership needs to attach the carrier's shipping document to the dealership sales record. If delivery is via the dealership's own vehicle, the dealership must complete and retain an affidavit noting the place, date and time of delivery. And, in this latter situation of delivery via dealership vehicle, the dealership would need to register, collect and remit to that delivery State the sales tax amount required by that State.

Another caution! If your delivery vehicle driver also sells parts "off the truck" while in another State, that State would require the dealership to register and collect that State's sales tax because the dealership would be soliciting sales in that State. Maine applies these same rules (registration and collection of sales tax) to non-Maine vendors operating in Maine.

PERFORMANCE DEFICIENCY LETTERS - HOW TO EVALUATE AND RESPOND

An increasing number of dealers report receiving performance deficiency letters from their manufacturers. These letters take many forms, but they all convey the message that the dealer has not met the factory's expectations or requirements in one or more areas of performance. Vehicle unit sales performance (whether overall or within a market area) seems to be the most frequent subject for these letters, with CSI coming in second. Other areas cited are warranty administration, required capital standards, and sales and/or service staff training achievement.

When a dealer receives a performance deficiency letter, the first step is to determine the purpose of the letter. These letters vary in tone from seemingly kind offers of assistance, to extremely aggressive notices of default, to actual notices of franchise termination. An aggressive letter merits a more detailed and comprehensive response. And notices of termination and notices of default should immediately be discussed with legal counsel to preserve protest rights and any cure rights in the dealer agreement.

However, a response to even less aggressive letters (of the "let us help you" variety) should be made. No matter how friendly the wording, a performance deficiency letter is documentation in the factory's dealer file that the dealer has been given notice of its failures and "counseled" on the need to improve. It would be a mistake to assume that the issue will go away, or that the notice is so absurd that it deserves to be thrown out, or to fire off a knee-jerk response. To be effective, the dealer's response must show respect for the factory's opinions and, if appropriate, a willingness to take reasonable steps to improve while at the same time firmly asserting the dealer's right to reject ambiguous, illegal, unfair, or unreasonable accusations or demands.

A careful evaluation of exactly what is being communicated is also important before the dealer offers up a response. Terminology or figures contained in the letter that are new, unfamiliar, or difficult to understand should be highlighted as a reminder to request a complete explanation and clarification from the manufacturer.

A review of the history leading up to the letter is also important. All prior communications on the subject discussed in the letter should be gathered together in one place, including emails, letters, and notes of meetings. Of course, a copy of the current dealer agreement and all pertinent provisions, attachments and operating standards should be reviewed. It is possible that the performance deficiency letter is inconsistent with earlier communications on the subject. Sometimes, the letter is the very first communication of any kind on the subject even though the performance the letter complains about has actually been constant for years. Facts like these can be very important to include in the dealer's response to the letter.

After the initial review of the letter, any history, plus background materials, the form of the response can be tailored appropriately. While your attorney could send a response on law firm letterhead (and this is sometimes warranted), it often is best to have your attorney help draft a responsive letter for the dealer to send directly. This makes it easier for you and the factory to continue to treat the matter as a business issue rather than a legal one.



Safety Recalls

Q & A for Franchised Dealers

Q What is a federal motor vehicle safety recall?

A The National Traffic and Motor Vehicle Safety Act (the Act) gives the National Highway Traffic Safety Administration (NHTSA) authority to set safety standards for new motor vehicles built for the U.S. market. When it is determined that a motor vehicle is not in compliance with one of the hundreds of safety standards NHTSA has issued or that it has a safety-related defect, a recall may be initiated. The vast majority of safety recalls are initiated voluntarily by vehicle manufacturers (OEMs), with a minority influenced or ordered by NHTSA. In a typical year, tens of millions of motor vehicles and motor vehicle parts are recalled. Given their expertise, training, and investment in necessary tools and information, franchised dealers remedy almost all safety recalls, thereby helping to promote the safety of the motoring public.

Q How does federal law restrict the sale of new vehicles subject to a safety recall?

A Federal law imposes a “stop sale” on all new, undelivered vehicles and parts subject to a safety recall. Once a dealer receives notice of a safety recall, affected new vehicles or parts may not be delivered until the defect or noncompliance is remedied. However, the Act also mandates that OEMs both reimburse dealers for the cost of remedying recalls and provide additional compensation of at least 1 percent per month of the manufacturer’s (or distributor’s) selling price, prorated from the date of a recall notice until the date a motor vehicle recall is remedied.

Q Does federal law restrict the sale of used vehicles subject to a safety recall?

A No. The Act does not prohibit the sale (by dealers or anyone else) of used vehicles subject to safety recalls. (It does, however, prohibit the sale of used parts subject to recall.) Despite the lack of a federal used-vehicle sales prohibition, dealers should consider the following:

- Given that dealer service departments are authorized, trained, and equipped to remedy safety recalls for the brands the dealer represents, all used inventory of those brands should be checked routinely for unremedied safety recalls and any found should be performed prior to resale. Dealers considering the resale (at retail or wholesale) or lease of such a vehicle prior to performing the remedy should consult with legal counsel about the advisability of doing so.
- Dealers may periodically receive OEM “stop sale” notices covering used vehicles in inventory. Other dealers (both franchised and independent) may learn of such OEM “stop sale” notices through other means (*e.g.*, via the media). It is most prudent for a dealer with actual knowledge of an OEM “stop sale” to refrain from selling (at retail or wholesale) or leasing a covered vehicle until the recall is remedied. Alternatively,



a dealer with actual knowledge of an OEM “stop sale” could sell or lease covered vehicles if accompanied by a clear and conspicuous disclosure of the “stop sale” acknowledged by the purchaser/lessee. However, any dealer considering this latter approach should consult legal counsel (and perhaps its insurance carrier) as to whether such disclosure provides sufficient protection under state liability laws. Dealers should also discuss with counsel whether sales/leases contrary to an OEM “stop sale” may violate the terms and conditions of a franchise agreement and/or undermine the OEM’s product liability indemnity.

- On occasion, dealers may receive OEM recall notices with “stop drive” precautions applicable to certain used vehicles in inventory. As with “stop sales,” other dealers (both franchised and independent) may learn of a “stop drive” notice through other means (*e.g.*, via the media). Any dealer with actual knowledge that certain used vehicles are subject to a “stop drive” should not resell (either at retail or at wholesale) or lease such vehicles until the recall is remedied.

Q Is there a single source of information listing the safety recall status of any vehicle?

A Effective on August 20, 2014, the NHTSA website www.safercar.gov/vinlookup allows anyone (owners, lessees, prospective purchasers, dealers, etc.) to search safety recalls by model year, make, model, and vehicle identification number (VIN). This lookup function reflects information gathered from the VIN-searchable public-facing safety recall websites established by each light-duty OEM selling more than 25,000 vehicles per year in the U.S. OEMs must post recall status information on their websites concurrently with the creation of each new recall letter recipient list, must display a description of each unremedied safety recall applicable to a particular VIN dating back at least 15 years, and must update their sites at least once every seven days.

Search results will show whether a vehicle is covered by an incomplete recall(s) for which a remedy is available, an incomplete recall(s) for which the remedy is not yet available, or no incomplete recalls. They will not

detail recalls if the remedy has been completed. Mobile application versions of the lookup are available, but the site is not designed for “batch” submissions. Printing search results using the built-in “Print” button should result in a copy with the date/time printed.

Q Does the new NHTSA VIN-lookup site impose additional requirements on dealers?

A No. The new NHTSA VIN-lookup site does not directly impose new mandates on dealers. However, prudence dictates that dealers consider checking the NHTSA VIN-lookup site (or applicable OEM-specific VIN-lookup sites) prior to purchasing or reselling used vehicles. Dealers should also consider periodically rechecking the safety recall status of used vehicles in inventory for more than seven days. It is expected that most dealer management systems and other dealership information vendors will offer products designed to assist dealers with running used-vehicle safety recall VIN searches. Prudence also dictates that, at the least, dealers disclose to purchasers and lessees the existence of any unremedied safety recall information discovered with a VIN search (although it may be necessary to include in such disclosures disclaimers regarding the information’s accuracy). Note: given the potential for liability under state law, dealers should consult with their legal counsel concerning what additional impact these new VIN-searchable tools may have on their operations.

Q What’s the best course of action to take when a service customer, informed of an outstanding safety recall, refuses to authorize the work?

A You can’t force customers to have safety recall remedies performed. In fact, for any given safety recall, many owners/lessees opt not to have the defect or noncompliance remedied, despite the best efforts of OEMs and dealers to get them to do so. It’s best not to do the work surreptitiously. Instead, when a service customer refuses to have the work done, dealers should document that fact by asking the customer to acknowledge on the repair order that repair of the recall at issue was refused.



safercar.gov



DEALER TIPS FOR VIN LOOKUP AND VEHICLE RECALLS

WHAT IS THE VIN LOOKUP?

The National Highway Traffic Safety Administration offers this tool for people to look up Vehicle Identification Numbers (VINs) to see if they are covered by a safety recall that has yet to be remedied. It reflects information provided to NHTSA by vehicle manufacturers required to have their own public VIN-specific recall Web sites.

WHERE CAN I FIND IT?

The tool is available online at www.safercar.gov/vinlookup.

WHY SHOULD I USE IT?

Before purchasing a used vehicle or taking in a trade, this tool can help identify recalled vehicles. It can also be used to learn if used vehicles in inventory are subject to unremediated safety recalls. Lastly, you can help prospective purchasers/lessees to learn more about how they can use this new tool.

HOW TO USE THE VIN-LOOKUP TOOL

Use this tip sheet to train your staff on the existence of the new NHTSA VIN-lookup tool and how and when to use it.

Direct prospective customers to the www.safercar.gov Web site if they have questions on recalls or on other issues involving motor vehicle safety.

HOW TO FURTHER DIALOGUE WITH CUSTOMERS ABOUT RECALLS

Inform and educate your customers by making available the NHTSA recalls fact sheet.

Suggest that customers sign up for recall alerts on www.safercar.gov for the vehicles they own or that they may be interested in buying or leasing.