



NADA DIRECTOR'S COLUMN

It seems like we cannot get away from the topic of dealer data right now. With manufacturers updating their data policies for dealers to sign, it is constantly on the front burner at each of your stores. Now the Federal Trade Commission is getting into the game with a proposed one-size-fits-all rulemaking to protect customer information that is not the right approach.

As presented by NADA Chairman, Charlie Gilchrist, the article below is entitled:

Proposed Safeguards Rule Changes Aren't the Right Path Forward for Dealers

Across a number of industries, including the retail auto industry, the data landscape is changing drastically, and the volume of data our dealerships collect is growing exponentially. As dealers, we rely on this data to serve our customers—whether it's assisting with finance transactions or alerting customers for service. The data we maintain is at the heart of our businesses and core to our customer relationships and reputations. With this in mind, dealers have always taken significant steps to protect our customers' private information, and that will remain an essential priority for us going forward.

But recently the Federal Trade Commission issued a notice of proposed rulemaking to amend the Safeguards Rule. This would require dealerships to, among other things, adopt specific, minimum technological standards to protect the data we collect. Some of these requirements include encrypting customer information, multi-factor authentication, and hiring a chief information security officer (CISO) to oversee a dealership's information security program and report to its board of directors. While employing these measures may be desirable, they do not exist in a vacuum, and there has been no demonstration that all of them are necessary to protect customer information.

Not only would these prescribed measures add enormous compliance costs—an average one-time, up-front cost of \$293,975 and an average annual cost of \$276,925—they also fail to account for business size, risk and sensitivity of the data collected by entities required to comply with the rule.

The existing Safeguards Rule has afforded dealers the flexibility to employ data safeguarding tools that make sense based on the nature of our respective businesses. In contrast, the FTC's proposed changes would dictate that all dealerships across the country implement all items on a long list of security tools and requirements. The cost of these changes might be easy for a megabank like Citibank to absorb, but as we're all aware, most dealerships are small, Main Street businesses, and

we don't have the same resources. While we all support protecting customer information and dealers should proactively review with their vendors the adequacy of their security measures, the FTC's proposed one-size-fits-all rulemaking is not the right approach. Indeed, *Automotive News* made just this point in an editorial published earlier this month. NADA is hard at work on this issue. In addition to submitting detailed comments to the FTC, we are leading comprehensive educational sessions with key reporters and media outlets, including *Automotive News*. Our priority is opposing the proposed sweeping amendments to the Rule and highlighting the significant impact they would have on dealers if adopted. NADA's goal is to obtain a regulatory approach that protects sensitive data appropriately but still allows dealers across the country to focus on our core business: serving customers and meeting their needs.

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NADA 2020—Reserve Now

Register now as hotel space fills up fast for the NADA Show in 2020. The Encore and Wynn Las Vegas will serve as the headquarters hotels for the show to be held Friday, February 14 through Saturday, February 17th.

Housing Information

- Hotel availability is on a first-come, first-served basis. You must be registered for the Show in order to reserve a hotel room. There is a limit of one (1) room per registered attendee.
- NADA offers complimentary shuttle service between hotels in the NADA block and the Convention Center.

Hotel Scams

NADA/Experient is the only authorized housing provider for the NADA and ATD Shows and is partnered with city hotels to provide exclusive discounted rates for attendees. Beware of fraudulent websites seeking to book your hotel. Reservations for the NADA and ATD Shows are only arranged through the NADA/Experient website or by calling 800.465.7110. Unauthorized housing providers claiming to be associated with NADA may contact you to solicit "special offer" hotel reservations and/or request non-refundable deposits. If you have received unauthorized solicitations or have any concerns, contact nada@experient-inc.com.

Carvana Coming to Arkansas?

On September 20, 2019, the Arkansas Department of Economic Development announced that Carvana, an online seller of used cars, was opening a distribution and inspection facility in West Memphis. Particularly concerning about this announcement is the fact that Carvana will receive millions of dollars in incentives from the state for building this facility.

AADA and dealers across Arkansas are working closely with Governor Hutchinson and Commerce Secretary Mike Preston to make it clear Carvana is not a business that should receive state tax dollars. This position is emphasized in a September 26, 2019, letter to Governor Hutchinson from AADA. There is still work to do on this issue and AADA is encouraging every dealer in Arkansas to contact Governor Hutchinson and your State Senators and Representatives to ensure they understand that giving incentive money to Carvana is bad for Arkansas consumers and bad for Arkansas businesses.

Points to emphasize include the following:

1. In 2018, Arkansas new car dealers created over 21,000 jobs with an average annual earnings by dealership employees of \$53,235 and total payroll of \$523 million. Dealers accounted for \$7.4 billion in total sales and \$485 million in state sales tax paid.
2. New car dealers invest tens of millions of dollars each year in facilities, and provide millions of dollars per year back into the local Arkansas communities they serve. This economic impact is accomplished without a single dollar of state incentive money and while following Arkansas law for the protection of consumers.
3. Carvana's business model is bad for consumers leaving buyers to figure out everything after the vehicle sale on their own with no local presence to turn to for assistance.
4. Carvana's "distribution and inspection center" is actually a retail delivery portal for vehicles into Arkansas while ignoring state regulations related to dealer licensing. These regulations are key to protecting Arkansas consumers.
5. Carvana has lost hundreds of millions of dollars, and Arkansas tax dollars should not be used to prop up a business.
6. The promised jobs are not e-commerce based.

The message is clear that investing in Carvana is not good business for Arkansas. If you have any questions call AADA at (501) 372-2596.

AG Turns Up Heat Over Mailers

Attorney General Leslie Rutledge's Office of Consumer Protection recently announced they are taking a strong position against the lottery and gaming style direct marketing mailers. AADA is working with the AG's office and Motor Vehicle Commission to insure all dealers are aware and compliant.



Dealers should review the following communication from the AG's office:

"Enforcement Advisory To Arkansas Automobile Dealers"

This advisory is directed to new and used automobile dealers and dealerships in Arkansas. The Attorney General's Office is charged with protecting Arkansas consumers from deceptive, false, and unconscionable business practices. Over the past several months, this Office has received numerous complaints from consumers who were mailed automobile dealership advertisements that contain games which appear to be a lottery ticket or scratch-off card.

A consumer protection investigation of these mail pieces has revealed that these bogus games are designed to mislead and trick consumers into the false belief that they have won the prize indicated—as they would with an actual lottery ticket—to prompt the consumer to go to the dealership to collect the prize. However as the responding consumer learns upon arrival at the dealership, there is no prize, but rather it is only a gimmick to try to sell them a car.

The Attorney General's Office has determined that the use of promotional materials containing devices which appear to be lottery-style games as described above constitutes a deceptive, false, and unconscionable practice in violation of the Arkansas Deceptive Trade Practices Act (ADTPA)¹ and the Arkansas Prize Promotion Act.²

The Attorney General's Office is committed to taking all measures necessary to stop the use of unlawful promotional devices in the State and that the further use of fake lottery-style games, or any similar bogus devices, in advertisements or promotions to Arkansas consumers shall be subject to legal enforcement by this Office.

As enforcement action by the Attorney General's Office may result in a judgement for civil penalties of up to \$10,000 for each and every violation of the ADTPA and the Arkansas Prize Promotion Act occurring within the preceding five years, as well

as injunctive relief to prohibit this, as well as any other, unlawful business conduct.

If you have any questions or wish to discuss this matter, please contact the Attorney General's Office at (501) 682-2007."

Attorney General Leslie Rutledge

Final Rule: E-Odometer Statements

On September 17, the U.S. Department of Transportation's National Highway Traffic Safety Administration (NHTSA) announced the publication of a Final Rule establishing standards under which states may allow for odometer disclosures in an electronic format.

Odometer fraud is a Federal crime and NHTSA has required sellers to disclose vehicle odometer readings at the time of sale for decades. However, most vehicle transfers have been subject to a requirement that odometer disclosures be made in a paper format with handwritten names and wet ink signatures.

This Final Rule removes the paper requirement by allowing for electronic disclosure systems that have robust security and authentication. This action also removes the last remaining Federal impediment to paperless motor vehicle transfers.

By removing the paper documentation requirement, NHTSA's Final Rule opens the door for state Departments of Motor Vehicles to move toward paperless transactions. Paperless transactions will save time and reduce costs for consumers and industry, create economic efficiencies, and improve security.

In addition to the e-odometer announcement, NHTSA also published a change that will assist in curbing odometer fraud. Current law does not require odometer disclosure with the transfer of vehicles at least 10 model years old. Due to the current average vehicle age of almost 12 years, an increasingly large proportion of the fleet is subject to a heightened risk of odometer fraud. To accommodate older vehicles, the Final Rule will require odometer disclosures until vehicles are 20 years old, beginning with the 2010 model year.

AADA will work closely with the Office of Motor Vehicles on the implementation of this Final Rule. If you have any questions do not hesitate to contact AADA at (501) 372-2596.

Changes to Overtime Rule

On September 24, 2019, the U.S. Department of Labor (DOL) announced a final rule updating and revising the earnings thresholds necessary to exempt executive, administrative or professional employees (EAP or "white collar") from the Fair Labor Standards Act's overtime pay requirements. The final rule will be effective January 1, 2020, and NADA is currently amending its Dealer Guide to Federal Wage and Hour, Child Labor and Wage Discrimination Compliance to reflect these new changes, and we will get this information to you as soon as it is available.

Specifically, employees who work more than 40 hours in a workweek but who meet both the salary and duties tests for an EAP exemption do not have to be paid the federal overtime premium of 1.5 times their regular rate of pay. The EAP exemption salary threshold is increas-

ing from the current \$23,660 to \$35,568 per year (or from \$455 to \$684 per week). The DOL is allowing up to 10% of these salary thresholds to be satisfied by nondiscretionary bonuses or commissions. No changes were made to the EAP exemptions duties tests that are detailed in the current NADA Dealer Guide. The salary threshold for highly compensated employees (HCEs) also is being increased from the current \$100,000 to \$107,432 (there are no duties tests for HCEs). The new rule requires that HCEs receive at least \$684 per week in salary, but the remainder of their compensation may be in the form of nondiscretionary bonuses or commissions. Important: under federal law, it is possible for more than one overtime exemption to apply to a given employee and for certain state laws to restrict how federal overtime exemptions may be applied.

AADA will continue to work closely with NADA to ensure dealers have as clear of a description of these revisions as possible. If you have any questions contact AADA at (501) 372-2596.

Washington Conference a Success

Dealers from across the country traveled to Washington D.C. to visit with members of Congress on September 16-17, 2019, to discuss a variety of topics that impact the industry. Representing AADA were Chairman Gan Nunnally of Nunnally Chevrolet in Bentonville, NADA Director Jack Caldwell of Caldwell Toyota in Conway, NADA Director-Elect Ted Smith of Smith Ford in Conway, and President Greg Kirkpatrick.



Meetings with Senator John Boozman, Senator Tom Cotton, Representative French Hill, and Representative Steve Womack once again illustrated that Arkansas has a Congressional delegation that is a friend to dealers and un-

derstands the challenges each of you face as small business owners and community leaders.

Topics that were discussed with the Senators and Representatives included a general update on the automobile market in Arkansas, relief from the Military Lending Act interpretation negatively impacting GAP waivers offered to active military members, concerns over trade issues and overbroad recalls, and an update on the concerns over the new Federal Trade Commission Safeguard Rule. AADA cannot thank the members of the Arkansas Congressional delegation enough for the time they gave our group, and we look forward to continuing to build on this strong relationship.

Used Car Rule Reminder

The Federal Trade Commission Used Car Rule requires dealers to display a copy of the "Buyers Guide" form and include specific language in the sales contract. As a reminder, the definition of a "used vehicle" under this Rule needs to be periodically reviewed.



According to the FTC, a "Used Vehicle" is defined as any vehicle driven more than the limited use necessary in moving or road testing a new vehicle prior to delivery to a consumer. The Rule does not apply to mileage accumulated due to dealer transfers or trades. An important note to keep in mind is that state law distinctions between "new" and "used" vehicles have no effect on the Rule. For example, all demonstrators and company cars, assuming they are driven "more than the limited use necessary in moving or road testing," are considered to be "used cars" under the Used Car Rule, even though such vehicles may be considered "new" under either or both the Automobile Information Disclosure Act (The Monroney Act) and state titling laws. Therefore, a used-car Buyers Guide MUST be displayed on all demonstrators and company cars being offered for sale. It is also important to note that some vehicles falling under manufacturer programs, while still considered "new" for manufacturer incentive purposes, may also be deemed "used" under the Used Car Rule.

The main thing to remember is that just because the vehicle may be "new" based on state law and the manufacturer, it may actually be "used" according to the FTC Used Car Rule. If you have any questions or need to order Buyers Guides please contact AADA at (501)372-2596.

It's Life Insurance Awareness Month!

Life insurance is an important piece of your overall financial plan. Here are some tips to help ensure you're making the most of your policy!



Are your beneficiaries up-to-date? If you've recently experienced any life events—like a change in your marital status or additions to your family—it might be a good time to update your beneficiaries. Beneficiaries can be family members and legal guardians of minors, or even estates and trusts. To change your beneficiary, download and complete the Beneficiary Change Form. Did you know? Your life insurance is an individual policy. That means you can take it with you if you leave employment or retire. Contact the Policy Continuation

Team for more information! Spread the word! You may not want to talk about life insurance with your family, but it's an important conversation to have. After all—if your loved ones don't know about your policy, how will they be able to use it? Here are three important steps you can take today:

- Make sure your family knows about your American Fidelity life insurance policy
- Store your policy information in a secure location alongside your will, birth certificates, or other important documents
- Consider keeping the instructions for filing a life insurance claim with your policy documents

Frequently Asked Questions:

- How do I get a copy of my policy?
- Who can receive information regarding the benefit?
- Why must my beneficiaries submit a W-9?
- Term Life: What happens when my term period has expired?
- For these answers and others, visit: <https://americanfidelity.com/support/life-insurance/>

Risk Management Academy Open

Federated Insurance is offering complimentary risk management training for all industries on November 5-7, 2019. Through this valuable session, you will discover methods you can use immediately to help protect profits by reducing risk at your business.



Companies that are the most successful at controlling losses and protecting profits have integrated risk management into their overall company culture. Many have designated a key person as their risk manager. This person is supported by your company's top management and is both responsible and accountable for identifying loss exposures and implementing risk management solutions.

This seminar's objective is to help your risk manager learn the exposures specific to All Industries, connect with peers from across the country and apply these best practices within your business. You can learn more by viewing a brief video about the Risk Management Academy.

To reserve your spot in the upcoming session or for more information, please contact Royetta Spurgeon at rlspurgeon@fedins.com or (800) 533-0472 Ext. 455-5604. Or visit <https://www.federatedinsurance.com/services>.

Mark Your Calendar

2019	
October 17	Board of Directors Meeting North Little Rock
December 4	Board of Directors Meeting North Little Rock
2020	
February 14	NADA Convention Las Vegas, NV