

## A collage of images representing various aspects of business and industry. The central image is the White House. Surrounding it are several other images: a laptop with code, a handshake, a car being charged, a factory worker, a speedometer with 'LAWS', 'RULES', 'REGULATIONS', and 'COMPLIANCE', a group of people in a meeting, a soldier, a person writing, and an American flag. The images are connected by lines, suggesting a network or flow of information.

## NADA'S ANNUAL UPDATE ON FEDERAL REGULATIONS

# REGULATORY MAZE

## Service and Parts Department

- Clean Air Act
- Clean Water Act
- DOT hazardous-materials-handling procedures
- FTC Used Parts Guide
- IRS Core Inventory Valuation
- LIFO/FIFO inventory accounting method
- NHTSA tampering rules
- NHTSA tire rules
- OSHA asbestos standards
- OSHA Hazard Communication Standard
- OSHA lock-out/tag-out procedures
- OSHA workplace health and safety standards
- RCRA
- Safe Drinking Water Act
- Superfund
- UNICAP

## Body Shop

- Clean Air Act
- EPA hazardous-waste rules
- OSHA Hazard Communication Standard
- OSHA Respiratory Protection Standard
- OSHA workplace health and safety standards
- UNICAP
- VIN and parts marking

## All Departments (Customer)

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- CAN-SPAM Act
- Consumer Review Fairness Act
- Driver's Privacy Protection Act
- Electronic Funds Transfer Act
- FTC Privacy Rule
- FTC prohibition against deceptive and unfair trade practices
- FTC Safeguards Rule
- FTC Telemarketing Sales Rule
- FTC warranty rules
- IRS Cash-Reporting Rule
- Magnuson-Moss Act
- OFAC restrictions
- Telephone Consumer Protection Act
- USA PATRIOT Act



Our annual list of major federal regulations. State and local laws also apply and sometimes include additional requirements.

### F&I Department

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- Equal Credit Opportunity Act
- FACT Act of 2003
- Fair Credit Reporting Act
- FTC Credit Practices Rule
- FTC Holder-in-Due-Course Rule
- Gramm-Leach-Bliley Act
- Military Lending Act
- Producer-Owned Reinsurance Companies
- Truth in Lending and Consumer Leasing acts

### All Departments (General Management/Personnel)

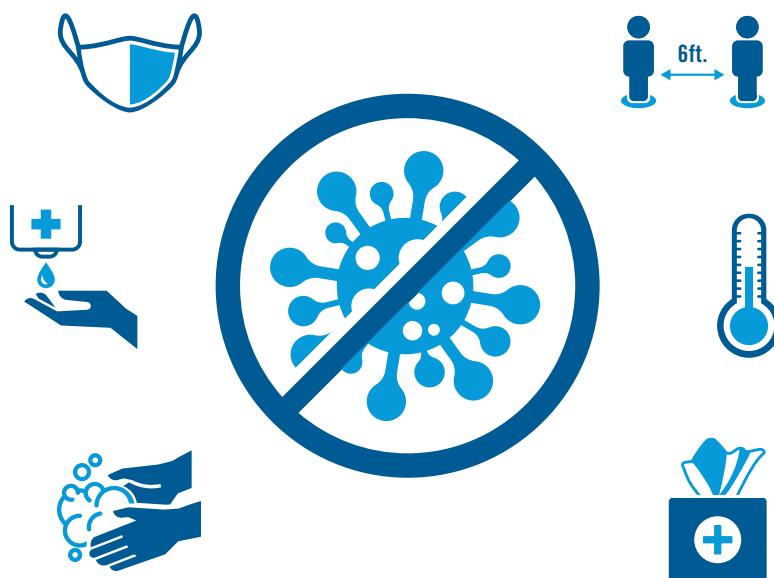
- Affordable Care Act
- Age Discrimination in Employment Act
- Americans with Disabilities Act
- COBRA
- Electronic deposit of taxes
- Electronic records retention
- Emergency-response planning
- Employee drug testing
- Employee Polygraph Protection Act
- ERISA
- Employee verification rules
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- Estate tax
- Family and Medical Leave Act
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- Federal wage-hour and child labor laws
- Genetic Information Nondiscrimination Act
- Health Insurance Portability and Accountability Act
- IRS/DOL worker classification
- IRS treatment of demo vehicles
- IRS treatment of tool plans
- Mandatory workplace posters
- Mental Health Parity Act
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- NLRB unionization rules
- Newborns' and Mothers' Health Protection Act
- OSHA Blood-Borne Pathogens Rule
- OSHA injury and illness recording and reporting requirements
- Section 179 expensing and bonus depreciation
- USERRA
- Walking-working surfaces and fall protection rule
- WARN

### New- and Used-Vehicle Sales Departments

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- DOE/EPA gas-mileage guide
- Federal bankruptcy law
- FTC Cooling-Off Rule
- FTC guidelines for fuel-mileage advertising and alternative-fueled-vehicle advertising and labeling
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- NHTSA tire regulations
- School van sales
- UNICAP

# COVID-19

Since the COVID-19 crisis began, NADA has been extensively engaged in navigating crucial legal issues and mandates to help dealers protect their employees and customers.



**M**ultiple federal pandemic-related programs ended in 2021. Most of the federal programs established in 2020 and early 2021 to address various consequences of the COVID-19 pandemic have ended. For example:

■ **Families First Coronavirus Response Act (FFCRA):** The mandate for emergency paid sick and child care leave ended on December 31, 2020, and the eligibility of dealerships to voluntarily provide FFCRA leave and use tax credits to offset the cost ended on September 30, 2021.

■ **Paycheck Protection Program (PPP):** Ended on March 31, 2021. It appears that most of the dealerships that were eligible applied for PPP loans and were subsequently granted forgiveness of those loans.

■ **Employee Retention Tax Credit (ERTC):** Allowed certain dealerships that were shut down due to COVID-19, or that had business reductions in 2020 or 2021, to take a credit against their employment taxes. Eligible employers could qualify for credits of up to \$5,000 per employee for 2020, and up to \$7,000 per employee for each of the first three quarters of 2021.

■ **Economic Injury Disaster Loan (EIDL):** Small Business Administration's (SBA) expanded COVID-19 EIDL program ended on December 31, 2021.

■ **Ongoing:** In addition to state and local mandates and resources, various federal agencies offer COVID-19 Workplace Health and Safety Guidelines designed to assist employers with their good-faith efforts to

prevent work-related infections. The Centers for Disease Control (CDC) has online resources for businesses to plan, prepare and respond to COVID-19. In addition to pursuing mandates for employers with 100 or more employees, the Occupational Safety and Health Administration (OSHA) offers guidance on preparing workplaces for COVID-19 and on returning to work. The Equal Employment Opportunity Commission (EEOC) provides technical assistance and FAQs on workplace anti-discrimination laws. Lastly, the Environmental Protection Agency (EPA) has issued guidance on disinfectants for use against COVID-19. ♦

In addition to this list of federal laws and regulations, be sure to consult [nada.org/regulatoryaffairs](http://nada.org/regulatoryaffairs) for more details.

### All Departments (General Management/Personnel)

- **Affordable Care Act (ACA):** Extensive health care reforms enacted in 2010 affect dealerships and their health care plans. For example, most dealerships with more than 50 full-time employees had to decide by January 1, 2015, whether to offer health coverage that meets the federal requirements or pay a penalty. Many additional reporting, recordkeeping and other duties apply to dealerships and other businesses. For more information, visit [healthcare.gov](http://healthcare.gov). The Tax Cuts and Jobs Act of 2017 (TCJA) eliminated the individual responsibility mandate after December 31, 2018.
- **Age Discrimination in Employment Act:** Protects older individuals against age-based employment discrimination.
- **Americans with Disabilities Act (ADA):** Prohibits discrimination against the physically handicapped in areas of public accommodation. Must make reasonable accommodations to facilities, such as by installing ramps, and accessible parking spaces, drinking fountains, public toilets and doors. While not clearly mandated by the ADA, businesses should consider developing and managing their websites to ensure they are accessible to those with disabilities.
- **Consolidated Omnibus Budget Reconciliation Act (COBRA):** Dealerships with 20 or more employees must continue health care coverage for ex-employees and their families for 18 to 36 months, depending on circumstances.
- **Electronic deposit of taxes:** Dealerships generally must use the Electronic Federal Tax Payment System.
- **Electronic records retention:** Revenue Procedure 98-25 explains IRS requirements for retaining computerized accounting records.
- **Emergency-response planning:** Federal, state and local laws require dealers to have emergency-response plans.
- **Employee drug testing:** Unionized dealerships must bargain with unions before implementing employer drug policies (not necessary for pre-employment drug testing). The ADA prohibits employers from discriminating against employees or applicants who have completed or are currently undergoing drug treatment, as long as they aren't currently abusing drugs.
- **Employee Polygraph Protection Act:** Prohibits dealerships from using polygraphs in pre-employment screening; allows use in limited cases where an employee is reasonably suspected of a workplace incident involving economic loss to the employer.
- **Employee Retirement Income Security Act (ERISA):** Dealers offering retirement or health plans must, among other things, provide employees with plan information, keep records and abide by fiduciary responsibilities.
- **Employment verification rules:** Dealerships must verify the employment eligibility of prospective new employees using I-9 forms and proper support documentation. Use of E-verify is optional.
- **Equal Pay Act:** Prohibits wage discrimination on the basis of sex.
- **Estate tax:** The estate tax limit for 2020 is \$11.58 million. The annual gift exclusion remains at \$15,000, with lifetime gifts beyond the annual exclusion counting toward the \$11.58 million combined estate/gift tax exemption.
- **Family and Medical Leave Act (FMLA):** Dealerships must post a notice informing employees of their right to take unpaid personal and family medical leave and must comply with appropriate requests for such leave. Special provisions apply to leave related to military service.
- **Federal child-support enforcement regulations:** Requires states to govern liens put on personal property—including vehicles—for overdue child support. Dealerships should check that child-support liens don't exist on used cars, and must place liens on wages of employees who are delinquent on child-support payments.
- **Federal Civil Rights Act:** Bars employment discrimination on the basis of race, sex, color, religion or national origin. Prevents employers from asking job applicants certain questions (such as age, marital status or childbearing plans). Prohibits workplace sexual harassment, including behavior that creates a hostile work environment.
- **FTC Repossession Rule:** Requires formal accounting of money collected for repossessed vehicles.
- **Federal wage-hour and child labor laws:** Address minimum-wage and overtime pay mandates and exemptions as well as standards for employing minors, including teen driving restrictions. Federal minimum wage is \$7.25 per hour; state and local minimum wage rates may be higher.
- **Genetic Information Nondiscrimination Act:** Prohibits discrimination based on health-related employee DNA information.
- **Health Insurance Portability and Accountability Act:** Generally prohibits health insurers from denying coverage to workers who lose or change jobs and bars insurers from excluding coverage for pre-existing conditions for more than a year.
- **IRS/DOL worker classification:** Dealers must determine whether their workers are employees or independent contractors. The IRS and the Department of Labor use multi-factor legal standards and tests to evaluate this question. When making worker-classification decisions, dealerships should be conservative and prepared to document their decisions. Of greatest importance: the level of control employers exercise over workers as measured by the means and manner of the work performed. The IRS Voluntary Classification Settlement Program encourages employers to admit past worker misclassifications.
- **IRS treatment of demo vehicles:** Revenue Procedure 2001-56 offers dealers alternative methods for determining the value of demo use by qualified salespeople and other dealership employees. It defines what constitutes limited personal use and streamlines recordkeeping requirements.



■ **IRS treatment of tool plans:** Tool and equipment plans for service technicians and other employees must comply with the IRS requirements for business connection, substantiation and return of excess payment.

■ **Mandatory workplace posters:** Notices, such as “Your Rights Under the FMLA,” “Equal Employment Opportunity Is the Law,” “Federal Minimum Wage” and “Notice: Employee Polygraph Protection Act,” must be conspicuously displayed.

■ **Mental Health Parity Act:** Requires insurers and large health plans to offer mental illness coverage comparable to that for physical illness and to set dollar limits on mental health care comparable to that for general medical and surgical services. The ACA generally mandates minimum mental health coverages.

■ **Miscellaneous recordkeeping requirements:** A multitude of requirements govern the length of time records must be maintained. Examples: Notification forms for underground storage tanks must be kept indefinitely; and copies of Form 8300 cash reports must be kept for five years.

■ **National Labor Relations Board (NLRB) unionization rules:** Govern unionization activities, including employee rights, election rules, postings and unfair labor practices.

■ **Newborns’ and Mothers’ Health Protection Act:** Employers and insurers must provide minimum hospital-stay benefits.

■ **OSHA Blood-Borne Pathogens Rule:** Dealerships more than four minutes from an emergency health facility must have a program to respond to employees who suffer cuts. All dealerships must have adequate first-aid kits.

■ **OSHA injury and illness recording and reporting requirements:** Dealers with 10 or more employees are required to maintain a yearly log of work-related injuries and illnesses on OSHA Form 300. Dealers must also complete a report on each workplace injury or illness that occurs using OSHA Form 301. Even if no injuries or illnesses have occurred in a calendar year, all dealers with more than 10 employees must fill out and post an

annual summary of work-related injuries and illnesses on OSHA Form 300A. Dealers also must report the following events to OSHA: all work-related fatalities; all work-related inpatient hospitalization of one or more employees; all work-related amputations; and all work-related losses of an eye. Heavy-duty truck dealerships with 20 to 249 employees per establishment also must electronically submit OSHA Form 300A. Both heavy-duty truck and light-duty car dealerships with more than 250 employees per establishment must electronically submit OSHA Form 300A.

■ **Section 179 expensing and bonus depreciation:** Generally, businesses can expense qualified Section 179 property, subject to phaseout. The total Section 179 deduction limitation is \$1,050,000 for 2021. Bonus depreciation is 100% for certain property acquired after September 27, 2017, and is good through 2022. This now also includes used equipment. Please note that this information is current as of December 10, 2021. Congress is, at present, considering legislation that, if enacted, could alter the Section 179 deduction limitation, bonus depreciation and phaseout parameters.

■ **Uniformed Services Employment and Reemployment Rights Act (USERRA):** Governs the employment and reemployment rights of members of the U.S. uniformed services.

■ **Walking-working surfaces and fall protection rule:** Must implement practices to prevent slips and falls, including personnel training and facility inspections.

■ **Worker Adjustment and Retraining Notification Act (WARN):** Dealerships must give 60 days’ notice to workers before termination or store closings under certain circumstances.

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### All Departments (Customer)

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■ **Americans with Disabilities Act (ADA):** Prohibits discrimination against the physically handicapped in areas of public accommodation. Must make reasonable accommodations to facilities, such as by installing ramps, and accessible parking spaces, drinking fountains, public toilets and doors.

### ■ CAN-SPAM (Controlling the Assault of Non-Solicited Pornography and Marketing) Act:

Emailers must identify a commercial message as an advertisement or solicitation and provide their physical postal addresses and a mechanism to opt out of future commercial emails. If recipients opt out, senders must stop sending them commercial email within 10 business days. The disclosure requirements don’t apply to emails that relate to transactions or relationships, such as those containing exclusively warranty information or recall-repair messages, or messages related to the completion of transactions requested by the consumer. No one may send commercial emails to wireless devices without recipients’ express prior authorization. So that senders can recognize wireless addresses, the FCC maintains a list of wireless domain names at [fcc.gov/cgb/policy/DomainNameDownload.html](http://fcc.gov/cgb/policy/DomainNameDownload.html). Commercial emailers must check the list monthly. (Additional provisions prohibit deceptive headers, misleading subject lines and other spam tactics.) A text message may also be considered an email and therefore subject to the CAN-SPAM Act if it is sent to an email address—that is, if it has an internet domain name after the “@” symbol (whether the email address is displayed or not). This means that no commercial text message (deemed to be an email) may be sent to a wireless device without “express prior authorization.” Merely having an “established business relationship” with the recipient is not enough.

■ **Consumer Review Fairness Act (CRFA):** Effective March 2017, the CRFA voids any “Form Contract” that seeks to impede consumer reviews and makes it unlawful for a person to offer such a form contract to consumers. In particular, it prohibits provisions in form contracts that (1) restrict a consumer’s ability to communicate reviews or performance assessments about a seller’s goods, services or conduct; (2) impose a penalty or fee on a consumer who engages in communications of that nature; or (3) require people to give up their intellectual property rights in the content of their reviews.

■ **Driver's Privacy Protection Act:** Prohibits access to personal information in state motor vehicle records except for limited purposes, such as driver safety, theft and recalls. Also restricts the release or use of personal info for marketing.

■ **Electronic Funds Transfer Act (EFTA):** EFTA and its implementing "Regulation E" govern a variety of electronic transactions. Certain provisions of Regulation E apply directly to any "person" that engages in certain activities or transactions, regardless of whether the person is a financial institution. Examples of such transactions include: issuing access devices (such as debit cards, personal identification numbers [PINs] or payroll cards); issuing or selling gift cards; initiating electronic check conversions; preauthorizing electronic fund transfers; or operating ATMs.

■ **FTC Privacy Rule:** Dealers must issue notices of their privacy policies to their finance and lease customers and, in some cases, to consumers when the dealer discloses nonpublic information about consumers to third parties. The rule also restricts disclosure of nonpublic personal information and requires dealers to contractually limit their service providers' access to and use of that information. Dealers who correctly use an FTC model privacy notice receive safe harbor protection for the language used to describe their privacy policy.

■ **FTC prohibition against deceptive and unfair trade practices:** Section 5 of the FTC Act prohibits unfair and deceptive trade practices. For example, the FTC has found certain advertising practices to be deceptive, such as offering "50% OFF" the purchase prices of vehicles, but the discounted prices are only available to a very limited number of customers and the qualifications for receiving the discounted price are not prominently disclosed in the ad.

■ **FTC Safeguards Rule:** The FTC recently amended the Safeguards Rule to require a series of procedural, technical, training, policy and other requirements for dealers to

ensure the security of consumer data. The deadline for compliance with the new rule is December 9, 2022. Dealers should review NADA guidance and consult with their advisors and vendors to ensure compliance.

■ **FTC Telemarketing Sales Rule (TSR):** Imposes many of the Telephone Consumer Protection Act (TCPA) restrictions (below) on dealers who telemarket across state lines. Requires dealers who sell or obtain payment authorization for goods or services during interstate phone calls to abide by the prohibition against numerous deceptive and abusive acts and to maintain certain records. Prohibits prerecorded telemarketing calls without a consumer's express written agreement, requires such calls to provide a key-press or voice-activated opt-out mechanism at the outset of the calls, and requires the calls to ring for 15 seconds or four rings before disconnecting.

■ **FTC warranty rules:** The Disclosure Rule mandates disclosure requirements for written warranties and requires simple language in a single document. The Pre-Sale Availability Rule details the methods by which warrantors and sellers must provide warranty terms before a sale. The E-Warranty Act allows warrantors to comply by posting warranty terms to a website, as long as the warrantor also provides consumers with a non-internet-based method to obtain warranty terms, and allows sellers to use electronic methods to provide consumers with warranty terms pre-sale.

■ **IRS Cash-Reporting Rule:** Dealers receiving more than \$10,000 in cash in one transaction or in two or more related transactions must file IRS/FinCEN Form 8300 with the IRS within 15 calendar days and must provide written notice that the report was filed to the person named in the report by January 31 of the following year. "Cash" includes certain cashier's checks, traveler's checks, money orders and bank drafts. The IRS permits dealers to file Form 8300 electronically.

■ **Magnuson-Moss Act:** Dealers must give consumers certain information on warran-

ties and service constraints. Warrantors are generally prohibited from requiring customer-pay service to be performed at a dealership as a condition of a vehicle warranty.

■ **Office of Foreign Assets Control (OFAC) restrictions:** Dealerships may not enter into transactions with certain sanctioned countries, governments, or specially designated organizations and individuals. Dealers should check the electronic list maintained by OFAC to ensure compliance.

■ **Telephone Consumer Protection Act (TCPA):** Requires express written consent prior to any text message or prerecorded or autodialed telemarketing call to a cell phone. You cannot send any text message whatsoever to a cellular telephone number—solicitation or not, whether the number is on a do-not-call (DNC) list or not—using an "autodialer" unless you have the called consumer's "prior express consent." The act imposes national and company-specific DNC rules, calling-time restrictions, caller ID requirements, fax advertising rules, and restrictions on the use of autodialers and prerecorded messages. Fax ads may be sent only to authorized recipients and must include a phone number, fax number and toll-free opt-out mechanism (each available 24/7) on the first page of the fax ad. The FCC considers text messages to be "phone calls" under the TCPA. Do not send text-message "solicitations" to phone numbers on the national DNC list (subject to the "established business relationship" and "prior express permission" exemptions to the national DNC rules) or your company-specific DNC list (to which there are no exemptions). See additional text-message restrictions under "CAN-SPAM Act."

■ **USA PATRIOT Act:** Dealers must search their records and provide information about individuals or entities with whom they conducted transactions or created accounts if requested by the federal Financial Crimes Enforcement Network. Dealers are currently temporarily exempt from the law's anti-money-laundering program requirements.

## New- and Used-Vehicle Sales Departments

### ■ American Automobile Labeling Act (AALA):

New cars and light trucks must have a domestic-parts content label showing percentage of U.S. or Canadian parts; countries contributing more than 15% of the parts; origin of engine and transmission; and location of vehicle assembly. Dealers must ensure that labels remain on vehicles until sold.

### ■ Corporate Average Fuel Economy (CAFE) and Greenhouse Gases (GHGs) rules:

NHTSA CAFE and EPA GHGs rules govern the fuel economy performance of all light-, medium- and heavy-duty vehicles, which affects their design, performance and cost. EPA also governs the use of alternative technologies and fuels.

■ **Diplomat vehicle purchases:** The State Department's Office of Foreign Missions must approve a diplomat's vehicle purchase before a tax exemption request may be honored.

■ **DOE/EPA gas-mileage guide:** Dealers must make this guide available to prospective new-vehicle buyers upon request. Download the guide from [fuelconomy.gov](http://fuelconomy.gov).

■ **Federal bankruptcy law:** Dealerships should perfect security interests within 30 days after a customer takes possession of a vehicle, regardless of state law. Otherwise, if the customer files for bankruptcy within 90 days of when the financing agreement is signed, the bankruptcy trustee may avoid the lien. Dealerships failing to perfect liens in a timely manner may be liable for losses.

■ **FTC Cooling-Off Rule:** Gives consumers a three-day "cooling-off" period only for sales not consummated at a dealership. Does not apply to auctions, tent sales or other temporary locations if the seller has a permanent place of business. FTC guidance states that an online sale or delivery of a vehicle to a consumer does not implicate this rule as long as the sale is negotiated at the dealership or online, and that the only activity that takes place at the home are the administrative tasks of obtaining a signature and delivering the vehicle.

### ■ FTC guidelines for fuel-mileage advertising and alternative-fueled-vehicle advertising and labeling:

Dealer and manufacturer fuel economy advertisements must state that the numbers are estimates and where they come from. Alternative-fueled vehicles must be properly labeled.

■ **FTC Used Car Rule:** "Buyers Guides" are required on all used vehicles offered for sale, disclosing whether the vehicle is offered "as is" or with a dealer warranty, other non-dealer warranty disclosures and service contract availability. Dealers must use the FTC-required Buyers Guide form.

■ **Gray-market vehicles:** EPA, NHTSA and U.S. Customs restrict the importation/sale of new and used vehicles.

### ■ Heavy-highway-vehicle excise tax:

A 12% excise tax generally applies to the first retail sale of (1) truck chassis and bodies with a gross vehicle weight rating (GVWR) in excess of 33,000 pounds (Class 8); (2) truck trailer and semitrailer bodies with a GVWR in excess of 26,000 pounds (Classes 7 and 8); and (3) "highway tractors," unless they have a GVWR of 19,500 pounds or less (Class 5 and under) and a gross combined weight rating of 33,000 pounds or less. Dealers selling Class 5 vehicles with more than 33,000-pound gross combined weight rating or Classes 6 or 7 vehicles should apply the "primary design" test to determine if a vehicle is a taxable tractor or a nontaxable truck.

■ **IRS treatment of salesperson incentives:** Factory incentives paid directly to salespeople by the factory are not required to be treated as wages for tax purposes. However, factories must report these incentives as taxable amounts to salespeople if \$600 or more.

■ **LIFO (last-in/first-out) inventory accounting method:** The use of the LIFO inventory methods must comply with the conformity requirement.

■ **Monroney sticker (Price Labeling Law):** Dealerships must keep stickers on new passenger cars showing the manufacturer's suggested retail price, plus other costs,

such as options, federal taxes, and handling and freight charges. Stickers also include EPA's revised fuel economy information and NHTSA's NCAP revised crash-test star ratings. Dealerships that alter covered vehicles must attach a second label adjacent to the Monroney label, stating, "This vehicle has been altered. The stated star ratings on the safety label may no longer be applicable." No size or form of this label is specified, but it must be placed as close as possible to Monroney labels on automobiles that (1) have been altered by the dealership and (2) have test results posted.

■ **Motor vehicle tax credits:** Customers may be eligible for up to a \$7,500 personal federal tax credit when they buy new qualifying plug-in electric or dedicated electric vehicles. Eligibility for this "EV Tax Credit" is based on a taxpayer's income and tax status. The EV Tax Credit begins to phase out when a manufacturer's overall EV sales reach 200,000 qualified vehicles in the United States. Note that several manufacturers have now exceeded, or soon will exceed, the 200,000 threshold. Note as well that this information is current as of December 10, 2021. Congress is, at present, considering legislation that, if enacted, will significantly expand and modify the EV Tax Credit. Dealers should use caution when discussing the availability of this credit, and should ensure they do not provide legal or tax advice.

■ **NHTSA alteration and tire-placarding rules:** Significantly altered new vehicles must have labels affixed identifying the alterations and stating that they meet federal safety and theft standards. Tire-placarding and -relabeling rules require a new tire-information placard/label whenever parts or equipment are added that may reduce a vehicle's cargo-carrying capacity, or when replacement tires differ in size or inflation pressure from those referred to on the original.

■ **NHTSA odometer rule:** Prohibits odometer removal or tampering and misrepresentation of odometer readings. Requires recordkeeping to create a proof of disclosure



to the customer and odometer disclosures on titles. Required disclosures may now be made electronically, consistent with state law. Vehicles with a greater than 16,000-pound gross vehicle weight rating and those 20 model years old or older are exempt, starting in 2021 for model years 2011 and later. Model years prior to 2011 are exempt from the 20-year disclosure requirement.

■ **NHTSA recall regulations:** New vehicles and parts subject to any safety recall, and used vehicles subject to “do-not-drive” safety recalls, should be brought into compliance before delivery.

■ **NHTSA safety belt/airbag deactivation:** Dealerships may install airbag switches for consumers with NHTSA authorization. Dealerships also must be responsive to consumer requests for rear-seat lap/shoulder safety belt retrofits in older vehicles.

■ **NHTSA tire regulations:** Rule requires proper replacement or modification of the tire-information labels when replacing tires or adding weight before first sale or lease. Also, customers must be given registration cards when buying new tires or the tires may be registered electronically. Other rules govern the handling and disposal of recalled new and used tires.

■ **School van sales:** Dealers may not sell, lease or give away large, new passenger vans with more than 10 seating positions if they know the vehicle will be used to transport students to or from school or school activities. Schools must purchase or lease a school bus or multifunction school activity bus for such purposes.

■ **Uniform capitalization (UNICAP):** Dealers who (1) “produce” property or (2) acquire it for resale if their average annual gross receipts over the three preceding tax years exceed \$25 million must comply with the UNICAP requirements contained in Section 263A of the Internal Revenue Code. Revenue Procedure 2010-44 creates two safe harbor methods of accounting, which dealers may elect by filing Form 3115 with the IRS, that generally permit dealers to expense, instead of capitalize, all han-

dling and storage costs at certain dealership facilities.

## F&I Department

### ■ Dodd-Frank Financial Reform Law:

Dealers engaged in three-party financing are excluded from the authority of the Consumer Financial Protection Bureau and remain subject to regulation by the Federal Reserve Board, the FTC (which has been given streamlined authority to declare dealer practices as unfair or deceptive) and state consumer protection agencies. Finance sources, including dealers who engage in BHPH financing, are subject to the bureau's jurisdiction. The Dodd-Frank law also created several new obligations for creditors, including additional disclosure requirements for risk-based pricing and adverse-action notices under the Fair Credit Reporting Act (Section-1100F). Plus, it contains a requirement to collect, report to the federal government, retain and make available to the public upon request certain data collected in credit applications from small, women-owned and minority-owned businesses. Dealers are temporarily exempt from this requirement pending promulgation of specific regulations.

### ■ Equal Credit Opportunity Act (ECOA):

Regulation B prohibits discrimination in credit transactions based on race, sex, color, marital status, religion, national origin, age and public-assistance status. The government interprets this prohibition as applying not just to intentional discrimination, but also to credit practices that result in a negative “disparate impact” on consumers based on one of these prohibited factors. In addition, the dealer/creditor is required both to notify applicants in a timely fashion of actions taken on—and reasons for denying—applications, and to retain certain records. (See also “Dodd-Frank Financial Reform Law,” above, for a description of small-business loan data collection requirements.) An optional ECOA compliance program template is available to dealers at [nada.org/faircredit](http://nada.org/faircredit).



### ■ Fair and Accurate Credit Transactions (FACT) Act of 2003:

Amends the Fair Credit Reporting Act (FCRA) and provides consumers with tools to help prevent identity theft and enhance the accuracy, security and reliability of their financial information. Dealer duties include: responding to requests for records from victims of ID theft and to fraud and active-duty alerts on credit reports; disposal requirements for credit report information; opt-out disclosure formatting requirements for pre-screened credit solicitations; truncating the expiration date and all but the last five digits on electronically printed credit and debit card receipts provided to purchasers at the point of sale; the Federal Reserve's Regulation FF restrictions on obtaining, using and sharing “medical information” in credit transactions; the FTC Red Flags Rule, which requires creditors and financial institutions to develop and implement a written Identity Theft Prevention Program that contains procedures to identify, detect and respond to “red flags” indicating the possibility of identity theft; the FTC Address Discrepancy Rule, which requires users of credit reports to develop and implement procedures to verify a customer's identity when receiving a “Notice of Address Discrepancy” from a consumer reporting agency; the FTC Affiliate Marketing Rule, which generally requires a business to offer customers the opportunity to opt out of receiving solicitations from the business's affiliates before affiliates may market to the customers; and the Risk-Based Pricing Rule, which generally requires initial creditors to issue either risk-based pricing notices to consumers



to whom credit is granted but on relatively unfavorable terms, or credit score disclosure exception notices to all consumer credit applicants. Additional requirements apply to businesses that furnish negative information about consumers to consumer reporting agencies.

■ **Fair Credit Reporting Act (FCRA):** Dealers are restricted in their use of credit reports for consumers, job applicants and employees. Credit reports generally may be obtained only pursuant to consumers' written instructions or if consumers initiate a business transaction (not if they merely talk with salespeople). Dealers must give job applicants and employees a separate document informing them that a credit report may be obtained and must obtain prior, written authorization to access the report. Dealers generally may not share credit information with affiliates unless they give consumers notice and the opportunity to opt out. If dealers take adverse action based on the report, they must notify consumers and follow additional procedures with job applicants and employees.

■ **FTC Credit Practices Rule:** Dealers are required to provide a written disclosure statement to a cosigner before the cosigner signs an installment sale contract. Dealers cannot "pyramid" late charges (that is, add a late charge onto a payment made in full and on time when the only delinquency was a late charge on a previous installment).

■ **FTC Holder-in-Due-Course Rule:** Preserves the consumer's right to raise claims and defenses against purchasers of consumer credit contracts (with automobile sales, it protects consumers who buy

vehicles from dealerships on credit). When dealerships sell credit contracts to lenders, consumers are obligated to pay the lenders instead of the dealerships. Under the rule, if a dealership engaged in fraud or made misrepresentations in selling a car on credit, a consumer could raise the dealership's conduct as a defense against the lender's demand for payments. Dealerships must ensure that their credit contracts contain the precise disclosure required by the rule.

■ **Gramm-Leach-Bliley Act:** See "FTC Privacy Rule" and "FTC Safeguards Rule" under "All Departments (Customer)."

■ **Military Lending Act (MLA):** The MLA imposes duties and restrictions on certain types of consumer credit extended to active-duty service members and their dependents that is not covered by the motor vehicle financing exclusion, such as a motor vehicle financing transaction with an active-duty service member that includes a cash advance (i.e., "cashout" financing).

■ **Producer-Owned Reinsurance Companies (PORCs):** IRS Notice 2016-66 identifies certain reinsurance arrangements as "transactions of interest" requiring taxpayer disclosure by the filing of Form 8886. While this requirement does not involve all reinsurance arrangements, the IRS may continue to scrutinize any transaction that shifts income from taxpayers to related companies and results in tax benefits. The Tax Cut and Jobs Act of 2017 reduced the tax rate to 21% for domestic finance and insurance reinsurance companies, including small companies, electing to be taxed only on investment income and U.S.-taxed "con-

trolled foreign corporations." The law makes significant changes involving non-controlled foreign corporations by expanding the definition of a U.S. shareholder and, most importantly, by changing the definition of a passive foreign investment company. These changes may decrease the ability of U.S. shareholders to defer the taxable income from these companies. The IRS recently proposed regulations addressing this issue, which when finalized should provide clarity in this regard.

■ **Truth in Lending and Consumer Leasing acts:** Regulations Z and M cover consumer credit and consumer leasing transactions, respectively, specifying information to be disclosed to a consumer before completing the transaction, and information to be disclosed when advertising consumer credit transactions or leases. For example, dealers who advertise a lease down payment or monthly payment amount must disclose in lease ads that the advertised deal is a lease; the total amount due at lease signing; number, amount and period (for example, monthly) of payments; and whether a security deposit is required.

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### Service and Parts Department

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■ **Clean Air Act:** Dealerships may not tamper with, replace or remove emissions-control equipment, such as catalytic converters. CFC recycling regs require dealership air-conditioning techs to obtain certification and to use certified recycling and recovery equipment to capture spent refrigerant, including HFC-134a and other non-ozone-depleting refrigerants. The act also regulates any fuels dealers store and dispense, and the alternative fuels motorists use, including gasohol. It restricts emissions from solvents and chemicals.

■ **Clean Water Act:** Sets standards for regulation of wastewater and stormwater at dealerships and comprehensive rules governing aboveground oil storage tanks.

■ **Department of Transportation (DOT) hazardous-materials-handling procedures:** Require parts employees who load,

unload and package hazardous products, such as airbags, batteries and brake fluid, to be trained in safe handling practices.

■ **FTC Used Parts Guide:** Prohibits misrepresentations that a part is new or about the condition, extent of previous use, reconstruction or repair of a part. Previously used parts must be clearly and conspicuously identified as such in advertising and packaging, and, if the part appears new, on the part itself.

■ **IRS Core Inventory Valuation:** Revenue Procedure 2003-20 creates an optional method for valuing core inventories for those using the Lower of Cost or Market Valuation Method.

■ **LIFO/FIFO inventory accounting method:** Revenue Procedure 2002-17 provides a safe harbor method of accounting that authorizes the use of replacement cost to value year-end parts inventory.

■ **NHTSA tampering rules:** Prohibit dealerships from rendering inoperative safety equipment installed on vehicles in compliance with federal law.

■ **NHTSA tire rules:** Dealerships must report sales of defective tires when they are sold separately from vehicles, and must properly manage recalled tires.

■ **OSHA asbestos standards:** Dealerships must use certain procedures during brake and clutch inspections and repairs to minimize workplace exposures. Water, aerosol cleaners or brake washers may be used to comply with the standard.

■ **OSHA Hazard Communication (HAZCOM) Standard (right-to-know laws):** Dealers must inform employees about chemical hazards they may be exposed to in the workplace, keep chemical product information sheets on-site and accessible, and train staffers to properly handle the hazardous materials. Also, EPA's community right-to-know rules require dealers to list annually with state and local authorities tanks of more than 1,600 gallons.

■ **OSHA lock-out/tag-out procedures:** Explain what service departments must do to ensure machines, including vehicles, are

safely disengaged before being serviced.

■ **OSHA workplace health and safety standards:** Extensive regulations cover a multitude of workplace issues and practices, from chemical labeling requirements to the number of toilets required. Example: Dealerships must determine if workplace hazards warrant personal protective equipment and, if so, to train employees on its use. Verbal or online reports must be made within eight hours of any incident involving the hospitalization or death of any worker.

■ **Resource Conservation and Recovery Act (RCRA):** Comprehensive environmental law regulating many dealership functions, including underground storage tanks and the storage, management and disposal of used oil, antifreeze, mercury products and hazardous wastes, including some airbags. Underground tanks must be monitored, tested and insured against leaks; leaks and spills must be reported to federal and local authorities and cleaned up. The law also regulates new-tank installations. Dealers must obtain EPA ID numbers if they generate more than 220 pounds per month (about half of a 55-gallon drum) of certain substances; must use EPA-certified haulers to remove the waste from the site; and must keep records of those shipments. Used oil should be burned in space heaters or hauled off-site for recycling. Used oil filters must be punctured and drained for 24 hours before disposal.

■ **Safe Drinking Water Act:** To protect underground drinking water from contamination, dealerships should avoid discharging waste liquids (such as used oil, antifreeze and brake fluid) into septic system drain fields, dry wells, cesspools or pits.

■ **Superfund (Comprehensive Environmental Response, Compensation, and Liability Act):** As waste generators, dealerships may be subject to Superfund liability. Carefully select companies to haul waste off-site. Dealers can deduct the cost of cleaning up contaminated soil and water in the year it's done. Dealers may qualify for an exemption from liability for sites

involving used oil managed after 1993. The service station dealer exemption application (SSDE) requires dealers to properly manage their oil and to accept oil from do-it-yourselfers.

■ **UNICAP:** See "New- and Used-Vehicle Sales Departments."

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## Body Shop

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■ **Clean Air Act (CAA):** National paint and hazardous air-pollution rules require reformulated, environmentally safer paints and finishes, special handling procedures, and recordkeeping.

■ **EPA hazardous-waste rules:** See "RCRA" under "Service and Parts Department."

■ **OSHA Hazard Communication (HAZCOM) Standard:** See "Service and Parts Department."

■ **OSHA Respiratory Protection Standard:** Requires written programs describing how to select, fit and maintain respirators to protect body shop workers from hazardous chemicals.

■ **OSHA workplace health and safety standards:** Extensive regulations affect body shops in many ways, including mandating the use and care of protective equipment such as face masks, gloves and respirators. Hex chrome standards limit air emissions during sanding and painting. (See also "Service and Parts Department.")

■ **UNICAP:** See "New- and Used-Vehicle Sales Departments."

■ **VIN and parts marking:** Dealers may not alter, destroy or tamper with vehicle identification numbers or anti-theft parts-marking ID numbers and should use only properly marked replacement parts. ♦

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