

WANADA Bulletin # 41-03

October 13, 2003

## REGULATORY ALERTS!

### Appeals Court Gives Go-Ahead to “Do-Not-Call List”

The on again, off again telemarketer “do-not-call” list is on again following a federal appeals court ruling last week that gave the Federal Trade Commission (FTC) the go-ahead to start enforcing its list, which the agency did last Thursday.

The 10th U.S. Circuit Court of Appeals in Denver temporarily blocked a lower court order barring the FTC from enforcing the national registry of more than 52 million numbers. The court questioned the conclusions of U.S. District Judge Edward Nottingham of Denver, who said the list violates the telemarketing industry's free-speech rights by barring calls from businesses but not charities.

But the appeals court said, “The Supreme Court has held that there is undoubtedly a substantial governmental interest in the prevention of abusive and coercive sales practices,” The court also noted



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### FTC Targets Dealers For Safeguards Rule Audits

The New Jersey Coalition of Automotive Retailers (NJCAR) recently reported that two area dealers – one in New Jersey and one in Pennsylvania – have been targeted by the Federal Trade Commission (FTC) for “non-public inquiries” into compliance with the Safeguards Rule, which went into effect on May 23, 2003.

The FTC confirmed to NJCAR that it is conducting investigations to determine the level of compliance with the Safeguards Rule, and that individual businesses may be investigated even in the absence of any specific complaint. “The FTC has not released any further information regarding who will be targeted for these ‘audits,’ or the scope of the ‘audit’ program. However, it should be assumed that there will be more,” NJCAR told its members.

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### IRS Steps Up Dealer Audits for Cash Reporting Violations

Automotive News reported last week that the Internal Revenue Service (IRS) has sharply increased audits of car dealers in the wake of new anti-terrorist legislation. Accountants and lawyers surveyed by Automotive News said two factors are behind the trend: the anti-terrorist USA Patriot Act, and a campaign against tax fraud that has uncovered federal cash-reporting violations at auto dealerships.

Several large accounting firms say the IRS is auditing dealers at twice the normal rate. Some say as many as 10 percent of their clients have faced audits this year.

The IRS auditors have focused primarily on violations of federal cash transaction reporting rules. Those rules are intended to prevent money laundering

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## “Do-Not-Call” List

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Congress had found some telemarketing calls “subjected consumers to substantial fraud, deception and abuse.”

Even though the list is moving ahead for now, the court fight continues. An appeals court will hear oral arguments in Tulsa, OK., on Nov. 10 on lower court rulings that the FTC lacks authority to run the program and the list violates telemarketers' free-speech rights by barring calls from businesses but not charities.

In the meantime, the FTC said Wednesday that consumers can register home or cell phone numbers with the free government service by

visiting the Web site [www.donotcall.gov](http://www.donotcall.gov) or calling 1-888-382-1222, beginning Thursday at 8 a.m. EDT. Consumers who registered before Aug. 31 can file complaints about telemarketers at the same Internet site and toll-free number, starting Saturday at 6 p.m. EDT. People who add new numbers have to wait three months before filing a complaint and it might take that long for them to see a reduction in telemarketing calls.

FTC Chairman Timothy Muris called the latest ruling “an important victory for American consumers,” and said his agency will return to enforcing the list as quickly as possible. Telemarketers will now risk a fine of up to \$11,000 every time they call a number on the list.

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## Safeguards Audits

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The Safeguards Rule is the second phase of the federal Gramm-Leach-Bliley Act, which was passed in 1999 to protect consumers' privacy. The first phase, requiring only privacy notices, kicked in two years ago. The Safeguards Rule requires businesses, including car dealerships, to develop written policies and procedures to protect customer data and to train employees to handle the data safely. Dealerships also must appoint staff members to coordinate the program, which includes auditing the procedures regularly to make sure they work.

“This action by the FTC should serve as a warning to all businesses affected by the rule.

Failure to comply with the Safeguards Rule can result in severe penalties, in some circumstances as much as \$11,000 per violation. Dealers should take care that their operations are in compliance with the Safeguards Rule,” said NJCAR.

WANADA conducted a comprehensive “Safeguarding Workshop” for members last April. In addition, both NADA and the Association of Finance and Insurance Professionals have produced guides to help dealerships comply with the Safeguards Rule. Additional copies of NADA's *Dealer Guide to Safeguarding Customer Information* are available from NADA Management Education. A download version in PDF format can be purchased from [www.nada.org/mecatalog](http://www.nada.org/mecatalog).

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## Tax Bill Reduces SUV Tax Loophole

A new bill moving through the U.S. Senate designed to help ailing manufacturers boost spending and add jobs would rewrite a part of the tax code that has been boosting SUV sales, according to The Detroit News. The Senate Finance Committee voted 19-2 last week to grant a 3 percent, across-the-board tax break to manufacturers, seeking to buttress a key sector of the economy amid concerns of job losses.

Lawmakers want manufacturers to use the tax savings to reinvest in U.S. operations and add jobs. But the tax bill includes scores of other provisions aimed at lowering the overall cost of the legislation. It reduces the so-called SUV tax loophole, which enables small businesses to write off up to \$100,000 of the cost of an SUV that qualifies as business equipment. The bill redefines which vehicles qualify as business equipment and limits the deduction for qualifying vehicles to \$25,000.

Automakers see the provision as a downside to a bill that otherwise is designed to boost the ailing manufacturing job market. The House is expected to act on the legislation this week.

## MD, VA UPDATES

## NADA Chairman Says CSI System is Flawed



**Alan C. Starling**

NADA Chairman Alan Starling said in an address to the Detroit Automotive Press Association last week that the system which automakers have been using since the 1970s to measure customer satisfaction “is broken and needs to be fixed.” He called on manufacturers to

work with their dealers to improve Customer Satisfaction Index (CSI) systems.

Starling said that a recent NADA-hosted dealer forum on CSI reached the following conclusions:

- CSI systems don't work as intended;
- They have lost credibility with dealers; and
- They undermine dealership operations.

He said consumers have “survey fatigue,” and CSI surveys are contributing to it with “long and cumbersome” questionnaires that are often not returned or carefully filled out. “Who has the time or patience to fill out a wordy eight-page survey? Not many people,” Starling said. “Of those who do fill them out, how many will consider each question thoughtfully? Even fewer. Who’s going to be the most motivated to fill out the surveys? Probably the least satisfied customers.”

“For these reasons alone, the results of CSI aren’t a very good reflection of dealer performance,” Starling added. “But poorly worded questions make bad surveys even worse.”

He noted that questions are often not specific or targeted enough. As an example, surveys typically make no distinction between satisfaction with the vehicle, which dealers can’t control, and satisfaction with the dealership experience, which they directly control.

Starling cited a lack of attention to the surveys by manufacturers, who usually “farm them out,” as one primary reason for their lack of effectiveness. “This hands-off approach is no way to gauge something as important as customer satisfaction,” he said. “Not surprisingly, CSI has steadily lost credibility with dealers through the years.”

Starling noted that CSI systems are treated by manufacturers as a key gauge for determining dealer evaluation and incentive programs, impacting the way dealers conduct their businesses. “Dealers end up spending too much time worrying about CSI scores and too little time focusing on what CSI is supposed to promote — customer service,” he said.

The shortcomings of CSI “can be fixed,” said Starling, and he urged each manufacturer to “take a fresh look at its entire CSI process with an eye toward the current marketplace.”

### Cash Reporting Audits

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by drug pushers and other criminals. Since 1985, vendors of high-ticket products have had to file Form 8300 if a customer makes a cash purchase exceeding \$10,000. Once auditors get in the door, accountants say they pursue a checklist of other tax issues, according to Automotive News.

“I don’t think there is any question there is an increase in audit activity,” Mike Charapp, a Washington lawyer who represents dealers and is a WANADA kindred member, told Automotive News. He said one of his clients is fighting a six-figure penalty for cash-reporting violations, and he knows of another mid-Atlantic dealer who settled similar charges. “The USA Patriot Act has empowered them to do this,” Charapp said.

Although first-time offenders are only fined \$50 for each violation of the cash reporting rules, Charapp pointed out that the IRS revisits dealerships where it previously found violations. “The IRS will treat each unreported transaction on the second audit as a willful violation and assess a civil penalty of \$25,000 per transaction,” he said.

The IRS has started more than 1,000 audits of new- and used-car dealerships as part of a campaign to catch tax evaders, Automotive News said. The agency has begun 280 criminal investigations of dealership employees this year, 15 percent of which involve violations of cash-reporting requirements.

**FOOTNOTES:*****Want to Know More About the WANADA Insurance Brokerage and Trust?*****Click on Wanada.org**

Dating back to 1947, the association's employee benefits program has always been a top priority. To contain costs and improve services to members in an ever-changing employee benefits market, the program was converted in 2001 from a trust plan to a full-service agency that can customize all types of insurance coverage for dealers. It is no longer "one size fits all."

Experienced WANADA professionals and consultants now survey the marketplace and evaluate plans to find the best values and state-of-the-art insurance products. WANADA can offer plans from any carrier, which are tailored to fit individual dealership needs for health, life, disability or dental insurance and 401k, from self-funding to full funding. And, unlike traditional approaches to employee benefits brokering, WANADA's staff professionals fully service the plans after the sale.

For more information, go to WANADA's Web site, [wanada.org](http://wanada.org); click on "Resources," then "WANADA Brokerage and Trust" for:

- 2004 Open Enrollment Notice for Life, Disability, and Dental
- Frequently Asked Questions (FAQ's)
- Helpful Insurance Links
- Initial COBRA Notification Letter
- Section 125 Plan Qualifying Event Guidelines

**If you're not with WANADA, you should be.**

**Call John O'Donnell or Martha Kowalski at (202) 237-7200.**

**NHTSA to Conduct Tougher Rollover Tests**

The National Highway Traffic Safety Administration (NHTSA) announced last week that it will conduct real-life tests on all vehicles to determine their tendency to roll over, rather than relying only on mathematical equations.

Following the 2000 Firestone tire recall, Congress passed a bill requiring NHTSA to develop real-life rollover tests. SUVs, pickups and cars -- starting with the 2004 model year -- will undergo a turning maneuver known as the fishhook on a test track, at 35 to 50 miles per hour. It is a common, though sometimes deadly maneuver in everyday traffic.

The vehicle fails the test if two tires lift off the ground at least two inches. The results, combined with a mathematical equation to determine a vehicle's stability, will produce a star rating. One star is considered poor, with a rollover risk of more than 40 percent. Five stars is excellent, with a rollover risk less than 10 percent. Consumers should have access to the information by January via the Internet, according to The Detroit Free Press.

**An Historical Perspective...**

*Some days being president is like being a jackass in a hailstorm where you just have to stand there and take it.*

**Lyndon B. Johnson**