

REGULATORY ALERT:

New OFAC National Security Rules: What Does It Mean for Dealers?

NADA reports that dealer associations and individual dealers have received vendor solicitations for products that are designed to assist dealers in complying with laws and regulations administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). The solicitations have generated many questions about the nature of these legal requirements and their application to automobile dealers. In order to respond to these queries, NADA recently met with the OFAC Compliance Office and obtained the following general information:

- OFAC's mission is to administer and enforce U.S. economic sanctions to accomplish foreign policy and national security goals. These are primarily directed against countries and groups of individuals, such as terrorists and narcotics traffickers.
- The OFAC restrictions are *separate* from the new requirements contained in the USA PATRIOT Act, which became law on October 26, 2001. The OFAC restrictions have existed for many years. OFAC administers the sanctions programs, whereas the Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") is primarily responsible for the relevant sections of the USA PATRIOT Act.
- The three provisions in the USA PATRIOT Act that Treasury Department attorneys have

identified as applying to dealers (cash reporting, information sharing and anti-money laundering) do not alter or change the existing OFAC restrictions. Therefore, FinCEN's temporary exemption

(Continued on page 2)

URGENT MD LEGISLATIVE ALERT!

Dealers Urged to Press on With DOC Fee Bill !

WANADA and MNCTDA are urging all Maryland dealer members to contact their state legislators immediately in support of **SB 438/HB 454, Dealer Processing Fee** legislation, which calls for a sorely needed increase in the maximum amount a dealer can charge for processing fees from the current level of \$25 to \$100.

Hearings on this legislation were held before the Maryland Senate Judicial Proceedings Committee on Feb. 13 and before the House Environmental Matters Committee on Feb. 18. Reaction by legislators to an increase in DOC fees, which have not been raised in ten years—has been favorable. The question is how much. That is why it is vital that dealers contact their legislators immediately to push for the \$100 level in the bill.

As Geoff Pohanka and others have testified, a \$25 fee simply isn't adequate for the handling of all the paperwork dealers must process in the sale of a vehicle – particularly in light of significant increases in government-mandated paperwork.

It should also be noted that the MVA reduced the amount paid dealers for collecting the excise tax by 50 percent, and all neighboring states have

(Continued on page 4)

Inside...

- Alexandria VW Grand "Re-Opening"...p.3
- New Consumer Info Rules.....p.3
- Auto Tech Competition Resched-
uled.....p.3
- Dealer Alert.....p.4

OFAC Regulations

(Continued from page 1)

of automobile dealers from the anti-money laundering requirement *does not* affect the OFAC-implemented sanctions.

- The OFAC restrictions are extremely broad. They prohibit all U.S. persons from engaging in transactions with certain sanctioned countries, governments, or specially designated organizations or individuals (collectively referred to as “prohibited persons”). In the case of individuals and entities identified as terrorists or supporters of terrorism, the sanctions prohibit all U.S. persons from transacting or dealing in any property (or interest in property) of the designated party. There is no minimum dollar threshold. Therefore, the restrictions prohibit dealers from entering into a contract with a prohibited person for an oil change just as they prohibit dealers from entering into a contract with a prohibited person for the purchase of a high-end vehicle.
- The prohibition on transacting or dealing in property or interests in property with a prohibited person is not dealer-specific. Although it is more likely to arise in the context of importers/exporters, banks, the securities industry and others that frequently transact business with foreign entities, the prohibitions apply to *all* U.S. persons (including all U.S. retailers). Thus, the OFAC restrictions prohibit a fast-food restaurant from selling a hamburger to a prohibited person, a department store from selling an appliance to a prohibited person and a gas station from selling a gallon of gas to a prohibited person.
- OFAC maintains a List of Specially Designated Nationals and Blocked Persons (‘SDN List’) on its web site (www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf). This is an alphabetical list of over 3,500 prohibited persons located throughout the world. OFAC periodically updates the SDN List as names are added or deleted. The updates may occur weekly or they may only occur once every six months. Only a few of these prohibited persons are known by OFAC to be presently in the United States.
- The SDN List does not include the names or descriptions of everyone with whom U.S. persons are prohibited from entering into a transaction.

OFAC administers a number of other economic sanctions programs, which include, among other things, prohibitions on transacting in property of Cuban nationals who are not lawful residents of the United States or with the governments of Cuba, Iran, Iraq, Libya or Sudan or any person working for or on behalf of those governments. Dealers can find information about these programs on OFAC’s web site (www.treas.gov/offices/enforcement/ofac/).

- The penalties for noncompliance can be severe. Depending on the program, criminal penalties can include fines from \$50,000 to \$10 million while imprisonment can range from 10 to 30 years for willful violations. Civil penalties can range from \$11,000 to \$1 million for each violation.
- OFAC does not require U.S. businesses to develop and implement an OFAC compliance program, although a compliance program may be considered a mitigating factor by OFAC in a civil penalty proceeding. OFAC does not provide guidance to retailers on what constitutes an adequate compliance program. One component of compliance programs that companies in some industries employ is the use of name-recognition software that matches the names of prospective customers with the names of prohibited persons identified on OFAC’s SDN List. Such programs obviously do not screen prohibited persons who are not identified on the SDN List (e.g., Cuban nationals who are not lawful residents of the U.S.).
- The OFAC web site states that U.S. persons are expected to exercise “due diligence” in determining whether prohibited persons are involved in a proposed transaction. The appropriate degree of diligence will depend on the facts and circumstances, and it is recognized that retail operations in the U.S. are not where the primary focus of terrorist financing rest. Nevertheless, the legal obligations apply to all U.S. persons and cannot be dismissed simply because the risk is low.

The foregoing only highlights certain aspects of the OFAC restrictions. Additional information is available on OFAC’s web site, including OFAC’s recently-posted Frequently Asked Questions (www.treas.gov/offices/enforcement/ofac/faq/index.html). The above information is also posted on www.nada.org, click on government affairs, then regulation.

DEALERS IN THE SPOTLIGHT**VW CEO Gerd Klauss Attends Grand Re-Opening of Alexandria VW**

Volkswagen of North America CEO Gerd Klauss, VWNA Vice President of Sales Frank McGuire, and Alexandria City Mayor Kerry J. Donley, were among the distinguished guests of Wes Greenway at his "Grand Re-Opening" of Alexandria Volkswagen on February 21. The totally remodeled dealership was celebrating its new status as a state-of-the-art Volkswagen "New Marketplace" facility, featuring the latest technology and design to enhance the customer buying experience.

Formerly Ray Burnette Volkswagen, the dealership has been in Alexandria since 1977. Greenway bought it in 1998 and changed its name the following year. "I've invested a lot of resources getting the old store in shape, and when Volkswagen came out with its New Marketplace Program, we opted for it," said Greenway. Out of 860 VW stores in the U.S. and Canada, less than 200 are New Marketplace stores, and only four in the Washington area. The affable – and obviously well connected – Greenway credits the success of the Grand Re-Opening to his high customer satisfaction rank-

ing and community involvement. WANADA tips its hat to Wes as well.



At the ribbon cutting are, from left, Alexandria Volkswagen Vice President Linda Greenway, Kerry J. Donley, Alexandria City Mayor, Gerd Klauss CEO Volkswagen of North America, and owner, Wes Greenway.

New Requirements to Protect Customer Information Go Into Effect May 23

NADA is also alerting dealers that, effective May 23, 2003, each dealership will be required to develop, implement and maintain a comprehensive written information security program to protect its customer information.

The new Federal Trade Commission requirement is in accordance with the Gramm-Leach-Bliley Act, which currently requires that dealerships give notice to the customer of the potential use of personal information that is gathered. Under the new requirement, dealers must ensure that their affiliates and service providers maintain appropriate safeguards for customer information that dealers share with them.

In March, NADA will send "A Dealer Guide to Safeguarding Customer Information" that explains the new requirements, along with a template to assist members in developing their written information security program. Current

"Dealer Resources for the Federal Consumer Financial Privacy Regulation" can be found on NADA's web site, nada.org. Click government Affairs, then regulation.

Notice: Auto Tech Competition Reset For Wednesday, March 5

For the second time in this wicked winter of '03, the annual Washington Area Automotive Technology Competition was snowed out. It is now scheduled for Wednesday, March 5 at Montgomery College's Homer S. Gudelsky Institute for Technical Education at 2:30 p.m.

Dealers are invited to attend and see the next generation of techs in action. For more information and directions, call Nick Champeau at WANADA, (202) 237-7200.

DEALER ALERT: Be on the Lookout for Identity Theft

Montgomery County Police Sgt. M. Fergus Sugrue is advising area dealers to be on the lookout for an individual using fraudulent identity who is trying to purchase new and used vehicles.

On February 26, Joseph Giampetroni at Ourisman's Chevrolet, Wheaton, MD, received a fax from a second chance credit company, BarNone, for an Amy Macomber. The Equifax report stated that the victim, Amy Macomber, had been the victim of an identity theft. He made contact with the real Macomber and she said that she did not make any requests for credit. The person contacted at the home number listed on the credit application said that they would take a message. The same day, William Cathie of Tyson's Ford, got the fax and tried the work phone, which reported no one there by that name. Cathie contacted the home number eight times and did not get through.

On February 27, the real Amy Macomber stated that somebody using her name had tried to open a First USA account on Feb. 11. They also tried to have an authorized user added to the credit card. The name was Donald J. Underwood.

The fraudulent identification being offered is: Amy Macomber, date of birth 10/16/1965, 4911 NE 7th Place, Washington, D.C. 20017, SS# 507-74-2617, Home # 202-610-0963, Work# 202-399-7504.

Any person approached by an individual using this identification is asked to contact their local auto theft unit for assistance, or Sgt. M. Fergus Sugrue, (301) 840-6163.

DOC Fee Bill *(continued from page 1)*

significantly higher processing fee limits than Maryland.

The strong support of individual dealers is critical to moving this legislation through their assigned committees so it can be brought before the entire General Assembly. An update memo to Maryland dealers redirecting the effort to the House Committee on Environmental Matters is enclosed. Dealers are urged to contact *all* of them, putting the talking points in your own words, mentioning your jurisdictional affiliation.

E-mail is most effective at this point, with direct links to legislators available on MNCTDA's website, www.mnctda.org, under the "members" section using "MNCTDA" as the password.



A "Quality" Dealer

Chris Zourdos, flanked by his wife Debbie and sons Peter (left) and Michael, displays his Time Magazine Quality Dealer of the Year Award at the recent WANADA/MNCTDA reception at NADA.

Staying Ahead...

The key to being a good manager is keeping the people who hate me away from those who are still undecided.

—Casey Stengel

Enclosure

- Special Bulletin on Maryland Processing Fee