

# Automotive News

## More regulations loom for auto dealers

Eric Freedman |

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Dealers have many roles. They're retailers, service providers, employers, taxpayers, creditors and franchisees.

Each role comes with regulatory requirements that collectively place a substantial economic and time burden on dealers. The latest annual wrap-up by the National Automobile Dealers Association's AutoExec magazine tallied more than 80 principal federal regulations and cautioned that "state laws also apply and are sometimes even stricter."

Continuing administrative activities - including proposed red flag rules for identity-theft prevention - and the advent of a Democratic Congress signal more obligations for dealers, such as a higher minimum wage.

Despite rhetoric about cutting red tape and curbing business regulation, the Bush administration and the former GOP Congress didn't reverse the regulatory juggernaut, observers say.

"There's no question the last several years have had a tremendous number of new regulations at the federal level," says Peter Sander, president of the Illinois Automobile Dealers Association. Those regulations include do-not-call and junk-fax rules.

But the pace may have decelerated. Says Douglas Greenhaus, NADA's director of environment, health and safety: "There are any number of regulations that could have been a heck of a lot worse if we had an administration less sensitive to the needs of small business. The wheels of the federal government turn in the direction of more government, although they may turn more slowly in that direction when certain folks are in power."

Even understanding current obligations is complicated. The Federal Trade Commission's frequently asked questions about compliance with the Gramm-Leach-Bliley (financial privacy) Act and FTC Privacy Rule run for six pages of single-spaced double columns. The Internal Revenue Service's questions and answers about Form 8300 and reporting cash payments of more than \$10,000 run about as long.

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### Other changes

What other changes may emerge from Congress and the administrative agencies that affect dealers? Experts say the list includes

- Tax incentives for higher-efficiency, hybrid and alternative-fuel vehicles that may affect consumer demand and vehicle availability
- NHTSA vehicle labeling rules
- Right-to-repair legislation that would compel disclosure of service and repair data to independent repair shops
- Family and Medical Leave Act extension to smaller employers, with mandatory paid leave
- A prohibition on use of the Federal Arbitration Act in dealer-customer disputes

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At the 2007 NADA convention, a number of agencies are scheduled to participate in the federal agency outreach pavilion, including the IRS, FTC, EPA, Occupational Safety and Health Administration and Office of Foreign Assets Control.

Administrative agencies are expected to be active on several significant fronts, both issuing regulations and enforcing existing laws.

For example, the FTC's pending red flag rules to fight identity theft could be issued



National Automobile Dealers Association's David Regan: "On the retailing side, our concern -- whether it's CAFE or global warming -- is we don't want Congress to force manufacturers to make vehicles the public doesn't want and will not buy."

*Photo credit: VIVIAN RONAY*

this spring, says Tom Hudson, a Hanover, Md., dealer lawyer and editor-in-chief of CARLAW, a Hanover, Md., online publication that tracks legal decisions and regulation. Hudson predicts "a real burden on dealers."

### Criticism raised

The rules have drawn criticism from NADA, the National Independent Auto Dealers Association and other industry voices.

In written comments to the FTC, Alan Hunn, general counsel for Nissan Motor Acceptance Corp., cautioned that some elements of the rules "assume duties that may be beyond the reach of a small local motor vehicle dealer" who lacks the ability "to check applicant information against Social Security Administration death master files, birthdate ranges, prison addresses, phone data or other nationwide data."

And Hudson predicts: "The level of compliance difficulty for dealers will probably be about the same as for the Gramm-Leach-Bliley (financial privacy) Act."

Paul Metrey, director of regulatory affairs at NADA, listed other areas of anticipated administrative action, including creditor duties under the Fair and Accurate Credit Transactions Act and a possible end to the dealer exemption from requirements of an anti-money-laundering program under the USA Patriot Act.

"It's going to increase, which it has for a five- or six-year period," Metrey says of new rules. "The pace will vary depending on when they come out and what the compliance date is."

Atlanta lawyer Gerry Coker, a director of the National Association of Dealer Counsel, notes that the Equal Employment Opportunity Commission recently announced stepped-up enforcement against systemic violations of anti-bias laws.

Coker pointed to the glass-ceiling situation where minorities or women aren't promoted to management or to higher-paid, more-responsible jobs. "The entities that need to be most aware are larger organizations, chains, multiple-dealership organizations," Coker says. "That's not to say large stand-alone dealerships shouldn't be aware of it."

David Regan, NADA's vice president for legislative affairs, foresees enhanced and more aggressive oversight of the administration by House and Senate committees.

There are likely to be hearings on global warming, for example, and they may encompass corporate average fuel economy standards.

"On the retailing side, our concern - whether it's CAFE or global warming - is we don't want Congress to force manufacturers to make vehicles the public doesn't want and will not buy," Regan says. "If that happens, dealers will take a hit because cars the public doesn't want will sit on dealer lots."

In the consumer protection arena, sponsors have promised to reintroduce legislation that failed in 2006 to mandate that insurers help maintain a database identifying all vehicles written off as total losses, with the information accessible to buyers and trade-in managers. In December, Automotive News reported that as many as 13,500 of the 200,000 vehicles damaged by Hurricane Katrina have received clean titles that don't mention flood damage after having been moved to other states.

Hudson identified potential legislation to extend the Truth in Lending Act to financed transactions exceeding \$25,000. Currently, the statute applies only when the amount financed is \$25,000 or less, but nowadays estimates are that more than half of such deals top \$25,000.

### Wage increase expected

Coker calls a federal increase in the minimum wage for the first time in 10 years "almost a certainty," although questions remain about timing and whether it will be stand-alone legislation or packaged with tax breaks for small businesses.

"It will have a bigger impact on dealerships than the average person would realize," Coker says, especially the need to closely track pay for salespeople, who often have ups and downs in income. Dealers also may incur higher payroll costs for lube technicians, clerical employees and support staff, such as greeters.

Coker also cited legislation that would require employers to recognize a union based on signed authorization cards from a majority of affected employees. Then, under the Employee Free Choice Act, the inability to negotiate a first contract within 90 days would allow either party to bring in the Federal Mediation and Conciliation Service and, if that fails, to arbitrate the terms of the first two-year contract.

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