

### Legal News

## BBB Updated Advertising Standards Steering Committee Bans Misleading Conditional Price Ads

 The Automotive Advertising Steering Committee met early this month and adopted major changes to the Minnesota Advertising Standards which are administered by Better Business Bureau of Minnesota and North Dakota (BBB) and designed to guide dealers away from producing deceptive and misleading ads.

The issue is misleading conditional pricing - phony price ads where many consumers aren't eligible to purchase the vehicle at the prominently advertised price. Since 2013, the Federal Trade Commission (FTC) has been very busy suing dealers across the country for a variety of deceptive advertising practices. Enforcement efforts included both civil and criminal charges of deceptive advertising, automotive loan application fraud, odometer fraud, deceptive add-on fees, and deceptive marketing of car title loans. The Agency claims a total of 187 enforcement actions against dealers in the United States.

The new standard adopted by the Steering Committee is in direct response to an FTC enforcement action against a Las Vegas Nissan dealer last year. Planet Nissan advertised a used Nissan at a prominent conditional price which required a trade in, college grad and military discounts. Planet Nissan disclosed the conditions right next to the price. But that wasn't good enough for the FTC, which alleged deception in its complaint because the vehicle was not "generally available to consumers" at the "prominently advertised price."

In response to the enforcement action in Planet Nissan, the Automotive Advertising Steering Committee adopted a strong, clear

*BBB Updated Advertising... continued on page 3*

### inside

Legislature at Halfway Point

CVR Has New Golf Plates

MADA Insurance Renewal

**"The most prominent reference to an advertised price or savings must be one available to all customers without condition."**

### upcoming events

may 10 Certified Title  
Minneapolis

may 10 Title Basics  
Minneapolis

jun 15 Title Basics  
Brainerd

visit  
[www.mada.org](http://www.mada.org)  
for details, registration  
and a complete list of  
Upcoming Events and  
Training

## Legislative News

# Minnesota Legislature Reaches Halfway Point

As the *MADA News* goes to print, the Minnesota Legislature has been in session for five weeks, with another five to go before its constitutionally-determined adjournment date of May 23. Thus far, legislators have focused their work in policy committees in order to meet deadlines and will now be shifting to budget issues. With a nearly \$1 billion surplus in the state's coffers, Governor Dayton and legislators are divided on how to proceed. The governor has recommended \$698 million in one-time and ongoing funding increases to expand early learning programs, workforce programs to address racial disparities, high-speed Internet access in rural Minnesota, mental health programs, and college affordability. House Republicans would prefer to use the dollars for transportation investments and tax reform, while Senate Democrats will likely be aligned more closely with the governor's plan. The vastly different approaches to the surplus dollars make envisioning a pathway to the session's end incredibly difficult at this time. However, there is one issue policymakers of all stripes have been able to agree to.



Minnesota Automobile Dealers Association

*The Minnesota Automobile Dealers Association is a non-profit trade association dedicated to the progress of the retail auto industry in Minnesota.*

#### President

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Metro: 651-291-2400 • Toll Free: 800-652-9029  
FAX: 651-291-2894 • Web site: <http://www.mada.org>

## **MADA Export Bill Awaits Floor Action**

MADA's top legislative priority, passing legislation to prohibit carmakers from penalizing dealers when a vehicle is unknowingly resold for export, has advanced through all of the necessary policy committees with unanimous support and awaits floor votes by each body of the Legislature. House File 2954/Senate File 2769, authored by Representative Jen Loon (R-Eden Prairie) and Senator Bobby Joe Champion (DFL-Minneapolis), has been warmly received by policymakers who are surprised that Minnesota dealers can face severe financial penalties for the legal actions of their customers.



## Services News

# Golf Plates Now Available through CVR

MADA Services has added the golf license plate to the list of Critical Habitat and Specialty plates available to dealers on the CVR Program. Proceeds benefit the Minnesota PGA Foundation to grow the game of golf through youth, military, diversity and charity programs.

Not on CVR? Contact MADA representative Matt Folska at 651-789-2955 to get the latest information.

BBB Updated Advertising... *continued from cover*

and easy to understand new standard governing conditional pricing and conditional payments.

The heart and soul of the new conditional pricing standard is contained in the first paragraph of new Standard 3, "The most prominent reference to an advertised price or savings must be one available to all customers without condition."

This new language is simple, direct and takes the view that when a reasonable consumer looks at an ad, they believe that the price most likely to catch their eye is an unconditional price - they should be able to come in, write a check and take delivery.

The second paragraph of new Standard 3 is the corollary provision which addresses payment ads, "The most prominent reference to an advertised monthly finance or lease payment must be the amount calculated from the vehicle price available to all customers without condition other than being creditworthy and entering into the finance or lease transaction."

Under this new language, the most prominent payment reference must not be conditional except to require the customer to enter into the credit or lease transaction advertised. Because the ad's assumption (and a customer's reasonable expectation) is that the customer must enter into the advertised transaction in order to take advantage of the offer, the most prominent payment may take into account financing incentives associated with the credit or lease offer, but no other.

The new standard will significantly impact dealer advertising across all media. But perhaps the most significant change will be seen in vehicle price ads on dealership websites and on combined listing sites like AutoTrader and CarSoup. The most prominent price that dealers will be permitted to "push" will need to be an unconditional price available to all consumers.

The Steering Committee and the new standard recognizes that special pricing for special conditions may be very important to some consumers. Dealers are free to advertise a conditional price - albeit less prominently in the ad - so long as they follow the established rule that the conditions be clearly and conspicuously disclosed in immediate conjunction with the the advertised secondary price.

Dealers should begin complying with the new standard immediately. The goal of course is to keep the FTC out of Minnesota. However, BBB, which monitors and challenges ads, will not demand strict compliance with the new standard until June 1. A change like this takes time. Dealers and dealership employees, advertising agencies and media reps will need time to get up to speed. Expect further communication from BBB and MADA about the new standard.

A number of resources, including sample ads, can also be found on the MADA website: <http://bit.ly/MADA-BBB-adstandards>

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## MADA News

### MADA at NADA

Over 200 people packed the MADA Opening Night Reception at the Bellagio during the NADA Convention in Las Vegas at the end of March. The MADA reception was a departure from the normal Sunday Brunch enjoyed by Minnesota dealers for decades. Changes in the NADA

Convention schedule prompted MADA to change its plans and host an opening night reception. The move seemed to work as Minnesota dealers and their guests streamed into the Lily Lounge at the Bellagio and got oriented before a busy four days at NADA.

## Legal News

# Supreme Court to Hear Arguments on Service Advisor Overtime Controversy

Oral arguments are scheduled for April 20, before the United States Supreme Court in the case of *Navarro v. Encino Motorcars, LLC*. The case involves application of the “salesperson” exemption from federal overtime requirements for service advisors and has been winding its way through the federal courts since 2012. The issue before the court is whether a typical service advisor employed at a car dealership is exempt from overtime pay as a “salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements.”

Historically, the “salesperson” exemption has included service advisors. This reading of the law has been sustained by federal courts on a number of occasions beginning in 1973 and continuing as recently as 2013. However, the U.S. Department of Labor’s (DOL) position on the issue has been inconsistent. At one point, the Department issued an interpretive provision which took the position that service advisors did not fall within the exemption. But after several courts nevertheless applied the exemption, DOL said that it would no longer dispute the issue.

Then in April 2011, the Department changed its position again and deleted the applicable regulation stating that the change reflected its new view that the exemption should be limited “to salesmen who sell vehicles and partsmen and mechanics who service vehicles,” and that service advisors did not fall within this description.

In the *Navarro* case, the 9th Circuit Court of Appeals deferred to the Department of Labor’s 2011 interpretation of the exemption and held that service advisors are not exempt from overtime pursuant to the “salesperson” exemption.

With oral arguments later this month, we could see a final decision as early as this summer. The court’s decision will apply to all dealers throughout the country. In the event the court should find that service advisors are not exempt from overtime under the “salesperson” exemption, dealers may wish to explore alternative commission-type pay plans which could also offer an overtime exemption for service advisor employees.

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## Legal News

# Federal Government Issues Final Persuader Rule

Effective April 25, 2016, a new U.S. Department of Labor (DOL) “persuader rule” will require employers, third-party lawyers and labor consultants to report the efforts or arrangements they make to persuade employees, directly or indirectly, on their right to organize and bargain collectively.

According to the Department, workers who understand that an outsider has been hired to persuade them can better weigh the claim that bringing the person is counterproductive to the workers’ interests. Knowing that their employer is spending money on outside consultants when

faced with a union organizing drive also could help workers assess an employer’s claims about their financial situation.

“Persuader” report forms must be filed electronically with the DOL, where they will become publicly available. Reports must include information concerning employer expenditures and the funds received by law firms and consultants. Reportable “persuader” activities include such activities as conducting union-avoidance seminars and distribution of “persuader” materials to workers.

# Minnesota Auto Outlook

Released by:  
**Minnesota Automobile  
Dealers Association**

Covering the Minnesota automotive market

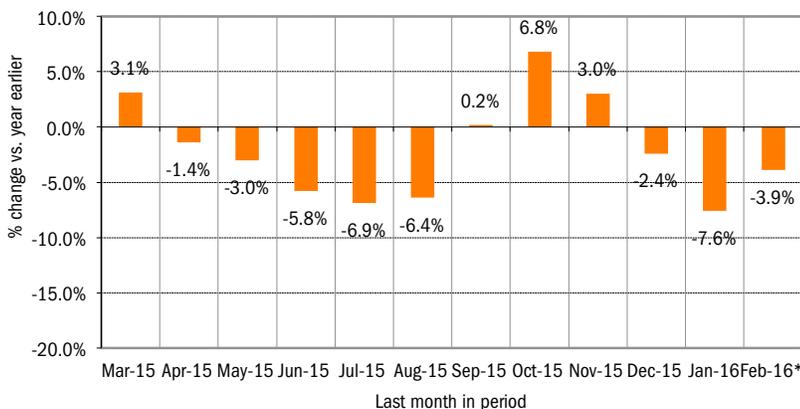
Data thru February 2016

## Minnesota New Retail Car and Light Truck Registrations

	Most Recent Two Months			YTD thru February			YTD Market Share		
	1/15 & 2/15	1/16 & 2/16*	% change	2015	2016	% change	2015	2016	change
	Industry Total	29,799	30,571	2.6%	29,799	30,571	2.6%		
Cars	9,977	9,089	-8.9%	9,977	9,089	-8.9%	33.5	29.7	-3.8
Light Trucks	19,822	21,482	8.4%	19,822	21,482	8.4%	66.5	70.3	3.8
Japanese Brands	10,058	10,379	3.2%	10,058	10,379	3.2%	33.8	34.0	0.2
Toyota	3,369	3,531	4.8%	3,369	3,531	4.8%	11.3	11.6	0.3
Honda	2,453	2,580	5.2%	2,453	2,580	5.2%	8.2	8.4	0.2
Nissan	1,734	1,830	5.5%	1,734	1,830	5.5%	5.8	6.0	0.2
Other	2,502	2,438	-2.6%	2,502	2,438	-2.6%	8.4	8.0	-0.4
Domestic Brands	16,291	16,967	4.1%	16,291	16,967	4.1%	54.7	55.5	0.8
General Motors	7,106	7,228	1.7%	7,106	7,228	1.7%	23.8	23.6	-0.2
Ford	5,536	5,816	5.1%	5,536	5,816	5.1%	18.6	19.0	0.4
Chrysler	3,608	3,881	7.6%	3,608	3,881	7.6%	12.1	12.7	0.6
Other	41	42	2.4%	41	42	2.4%	0.1	0.1	0.0
European Brands	1,605	1,501	-6.5%	1,605	1,501	-6.5%	5.4	4.9	-0.5
Volkswagen	695	650	-6.5%	695	650	-6.5%	2.3	2.1	-0.2
BMW	443	346	-21.9%	443	346	-21.9%	1.5	1.1	-0.4
Mercedes	255	234	-8.2%	255	234	-8.2%	0.9	0.8	-0.1
Other	212	271	27.8%	212	271	27.8%	0.7	0.9	0.2
Korean Brands	1,845	1,724	-6.6%	1,845	1,724	-6.6%	6.2	5.6	-0.6

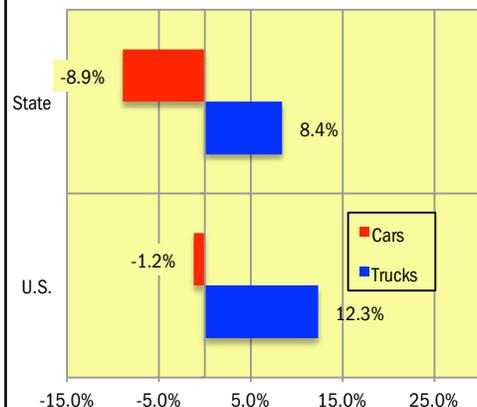
Brands included above: Domestic Brands: GM (Buick, Cadillac, Chevrolet, and GMC), Ford (Ford and Lincoln), Chrysler (Chrysler, Dodge, Jeep, and Ram). Japanese: Toyota (Toyota, Lexus, and Scion), Honda (Honda and Acura), Nissan (Nissan and Infiniti), Other (Mazda, Mitsubishi, and Subaru). European: VW (Audi, Bentley, Porsche, and Volkswagen), BMW (BMW, Rolls Royce, and MINI), MB (Mercedes Benz and smart), Other (Alfa Romeo, Aston Martin, Ferrari, Fiat, Jaguar, Land Rover, Lotus, Maserati, and Volvo). Korean: Hyundai and Kia.  
\*Figures for February 2016 were estimated by Auto Outlook. Data Source: IHS Automotive.

### Percent Change in Three Month Moving Average of New Retail Registrations versus Same Period Year Earlier



The graph above provides a clear picture of the trending direction of the state market. It shows the year-over-year percent change in the three month moving average of new retail light vehicle registrations. The three month moving average is less erratic than monthly registrations, which can fluctuate due to such factors as the timing of manufacturer incentive programs, weather and title processing delays by governmental agencies.  
\*Figures for February 2016 were estimated by Auto Outlook. Data Source: IHS Automotive.

### Percent Change in State and U.S. New Retail Light Vehicle Markets YTD '16 thru February\* vs. YTD 15



The graph above compares the change in new retail car and light truck registrations in both the state and U.S. markets. \*Figures for February 2016 were estimated by Auto Outlook. Data Source: IHS Automotive.

### Data Information

All data represents new vehicle retail registrations in Minnesota and excludes fleet and wholesale transactions. Please keep in mind that monthly registration figures can occasionally be subject to fluctuations, resulting in over or under estimation of actual results. This usually occurs due to processing delays by governmental agencies. For this reason, the year-to-date figures will typically be more reflective of market results.  
Data Source: IHS Automotive.

Minnesota New Retail Light Vehicle Registrations					
	Registrations			Market share	
	YTD '15 thru Feb.	YTD '16 thru Feb.*	% change	YTD '15 thru Feb.	YTD '16 thru Feb.*
TOTAL	29,799	30,571	3%		
Acura	214	193	-10%	0.7%	0.6%
Audi	191	185	-3%	0.6%	0.6%
BMW	364	326	-10%	1.2%	1.1%
Buick	535	582	9%	1.8%	1.9%
Cadillac	240	198	-18%	0.8%	0.6%
Chevrolet	4,982	5,034	1%	16.7%	16.5%
Chrysler	575	407	-29%	1.9%	1.3%
Dodge	755	810	7%	2.5%	2.6%
FIAT	23	28	22%	0.1%	0.1%
Ford	5,362	5,698	6%	18.0%	18.6%
GMC	1,349	1,330	-1%	4.5%	4.4%
Honda	2,239	2,388	7%	7.5%	7.8%
Hyundai	809	664	-18%	2.7%	2.2%
Infiniti	143	118	-17%	0.5%	0.4%
Jaguar	11	9	-18%	0.0%	0.0%
Jeep	1,284	1,449	13%	4.3%	4.7%
Kia	1,036	1,072	3%	3.5%	3.5%
Land Rover	84	99	18%	0.3%	0.3%
Lexus	283	292	3%	0.9%	1.0%
Lincoln	174	180	3%	0.6%	0.6%
Mazda	625	598	-4%	2.1%	2.0%
Mercedes	254	244	-4%	0.9%	0.8%
MINI	79	47	-41%	0.3%	0.2%
Mitsubishi	292	304	4%	1.0%	1.0%
Nissan	1,591	1,696	7%	5.3%	5.5%
Other	28	19	-32%	0.1%	0.1%
Porsche	37	38	3%	0.1%	0.1%
Ram	994	1,225	23%	3.3%	4.0%
Subaru	1,583	1,507	-5%	5.3%	4.9%
Tesla	27	29	7%	0.1%	0.1%
Toyota	3,086	3,248	5%	10.4%	10.6%
Volkswagen	467	436	-7%	1.6%	1.4%
Volvo	83	118	42%	0.3%	0.4%

Data source: IHS Automotive.

Top ten ranked brands in each percent change category are shaded green.

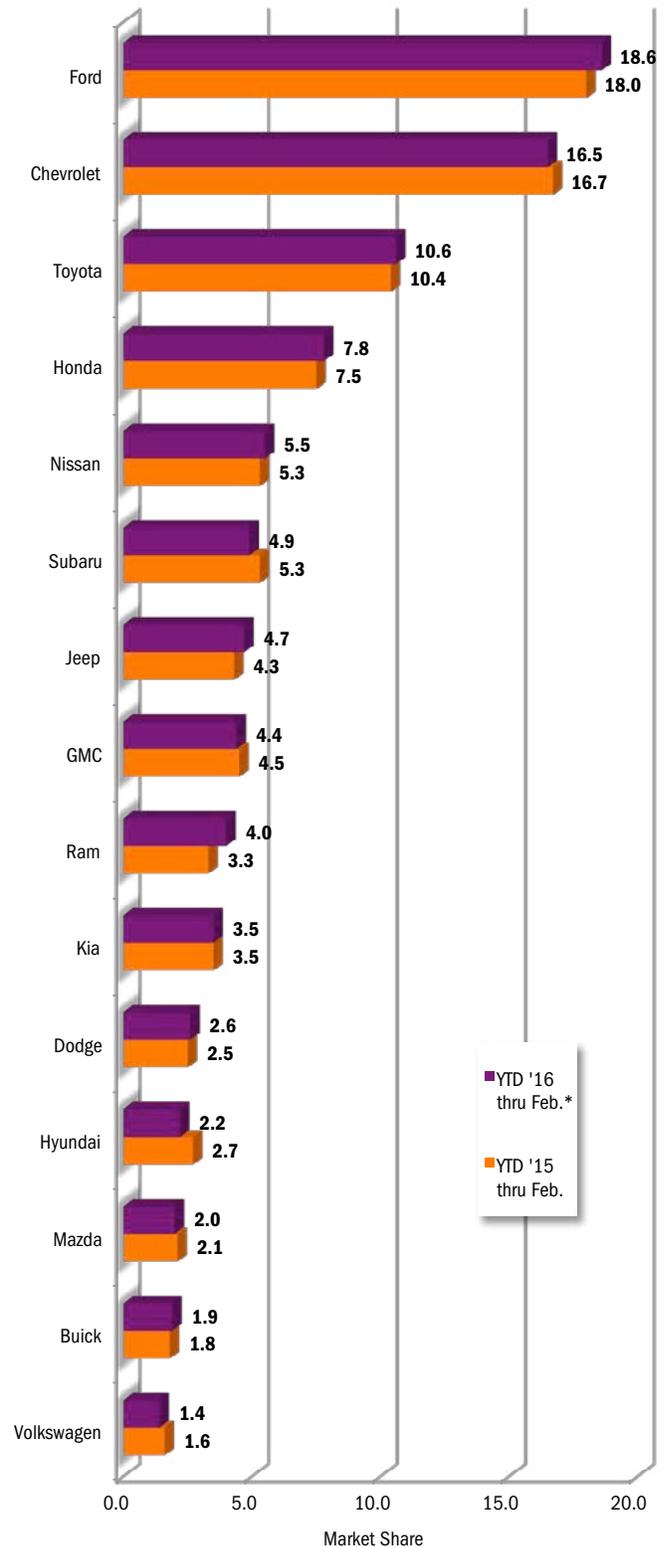
\*Figures for February 2016 were estimated by Auto Outlook.

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State Market Share for Top 15 Selling Brands  
YTD '16 thru February\* vs. YTD 15



Data source: IHS Automotive.

\*Figures for February 2016 were estimated by Auto Outlook.

## Member News

**Morrie's Automotive Group** has been sold to **Karl Schmidt**, the CEO since 2009, and **Fremont Private Holdings**. The businesses will continue to operate under the "Morrie's" name.

**Jeff Belzer Auto** (owners **Jeff, Jamie and Mike Belzer**) has purchased **New Prague Chevrolet** and **New Prague Ford Dodge Chrysler Jeep RAM** from Mark Swelland. The stores will be doing business as **Jeff Belzer's New Prague Chevrolet** and **Jeff Belzer's New Prague Ford, Dodge, Chrysler, Jeep, RAM**.

**Westman Freightliner**, Mankato has been purchased by **Harrison Truck Centers**. **Brian Harrison** is the Principal; **Tyler Westman** the General Manager. They will continue to do business as **Westman Freightliner, Inc.**

visit us online at  
[www.mada.org](http://www.mada.org)

## Insurance News

# MADA Insurance Renews with Blue Cross

MADA Insurance, Inc. has completed a successful renewal of its group health insurance program with Blue Cross and Blue Shield of Minnesota. Effective July 1, 2016, MADA dealer members who participate in the MADA Insurance group health program will be receiving either a reduction to their premiums or, in a few cases, a small increase to their premiums.

MADA Insurance, Inc. offers MADA dealer members several group health plans with different benefit and premium levels to choose from - all fully insured through Blue Cross. Some of these plans qualify for use with Health Savings Accounts (HSAs.) COBRA administration is included with all plans.

Group dental insurance through Delta Dental and group life insurance through Voya Financial are also available.

Please contact (or have your insurance agent contact) MADA Insurance, Inc. for more information.



*Endorsed Service & Vendors*

*Check Guarantee/Credit Card Processing*  
FIS / Certegy

*Collections*  
Springer Collections

*Computerized Vehicle Registration*  
CVR

*Dealer Bond Program*  
Ensure Agency

*Disability Income Insurance & Section 125 Cafeteria Plans*  
American Fidelity Assurance

*F&I Products*  
Protective

*Fleet Fueling Program*  
SuperAmerica

*Group Health Insurance*  
Blue Cross Blue Shield of MN  
Delta Dental  
ReliaStar Life

*Hole-In-One Insurance*  
Hole-In-One-USA

*Lighting*  
LED Supply Company

*Office Supplies*  
Innovative Office Solutions

*OSHA, EPA & DOT Compliance/Training*  
ComplyNet Corporation

*Pre-Paid Legal, Jim Gavin*  
Identity Theft Shield &  
Pre-Paid Legal Services

*Uniforms and Linen Services*  
AmeriPride Linen & Apparel  
Services

*Workers Compensation*  
Ensure Agency



MADA Services sells a wide variety of products directly to the dealers including business forms, clothing and promotional items. For a full review of options, contact your sales representative at 651-291-2400 or go to [www.mada.org](http://www.mada.org)

**ADVOCACY ■ EXPERTISE ■ EDUCATION ■ COMMUNICATION**  
**MADA NEWS ■ April 2016**

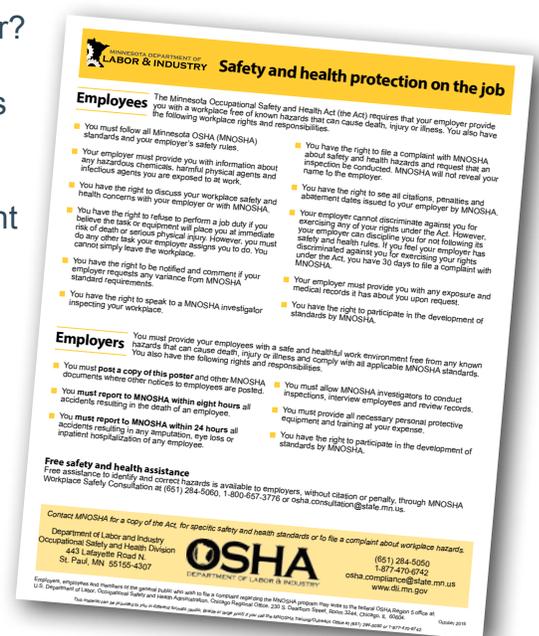
**FAQ**

**Q:** When is MADA going to mail out a new employment poster?

**A:** We're not sure. Employment laws and mandatory postings seem to change all the time. MADA works with a group of other associations to periodically prepare and distribute a large employment poster which consolidates the required employment postings for both Federal and State agencies.

Our vendor advises that even though the existing poster is out of date, it plans to wait for more law changes before it makes a complete overhaul.

Our most recent poster has a date of 2014 in the lower right hand corner. The out of date piece concerns Minnesota OSHA. Dealers should download the Minnesota OSHA poster and display it next to the 2014 version of the multi-poster. The OSHA poster can be found here:  
[http://bit.ly/OSHA\\_addon-print](http://bit.ly/OSHA_addon-print)





# Education Fax Registration

FAX REGISTRATION TO: 651-291-2894  
Denise Anderson [denise@mada.org](mailto:denise@mada.org)

	Class Options	Circle Preferred Date	Location
The Certified Title & Registration Program *	<b>Sales Tax</b> 9:00 a.m. - 10:00 a.m. \$129	May 10, 2016	Doubletree by Hilton - Park Place 1500 Park Place Blvd Minneapolis, MN 55416
	<b>New to Fleet</b> 10:30 a.m. - 12:30 p.m. \$129	May 10, 2016	
	<b>Minnesota Titles and Transfers</b> 1:00 p.m. - 3:00 p.m. \$129	May 10, 2016	

	Class Options	Circle Preferred Date	Location
Title Basics	<b>Title Basics – Minneapolis</b> 9:30 a.m. - 11:30 a.m. \$199	May 10, 2016	Doubletree by Hilton - Park Place 1500 Park Place Blvd Minneapolis, MN 55416

	Class Options	Circle Preferred Date	Location
Title Basics	<b>Title Basics – Brainerd</b> 9:30 a.m. - 11:30 a.m. \$199	Jun 15, 2016	Grand View Lodge

Name _____	Title _____
Name _____	Title _____
Dealership _____	Customer ID # _____
Address _____	
Phone _____	E-mail _____

\*Lunch is included, sponsored by CVR.