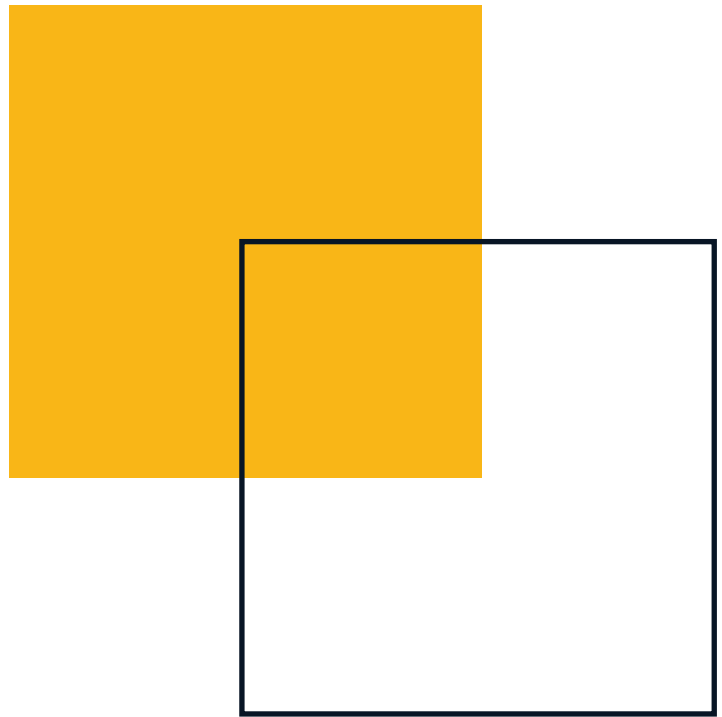




AUTOMOTIVE
OIL CHANGE
ASSOCIATION
SINCE 1987



2017

GOVERNMENT

AFFAIRS

AGENDA



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Magnuson Moss Warranty Act Enforcement



Percentage
of Fast Lube
Facilities
Affected: 100%



Risk Level: High

Background

From 2003 – 2016, AOCA filed nine formal complaints against automakers for violating the prohibition against tied products and services in warranties, advertisements, and service bulletins. FTC took action in two cases; Honda (2011) and BMW (2015). The case against Kia Motors/Hyundai is still pending. AOCA filed extensive comments to FTC's 2011 regulatory review of the MMWA interpretations. In 2015, FTC finally published an official revision to the interpretations, including AOCA's requested acknowledgment of "implied" tying violations. However, FTC refused to require upfront disclosures by automakers and/or their dealerships.

Current Efforts

Continue to (1) investigate Kia/Hyundai; (2) pursue state legislation; (3) collect evidence regarding automaker and dealership violations of MMWA prohibition against tying branded products and services; and (4) educate consumers about their MMWA rights. The necessary information to overcome automaker/dealership PAC pressure in all states is customer survey data. Reality is on the fast lube industry's side, but the evidence of it must be gathered.

Recommended Action

The AOCA Fast Lube Customer Warranty Rights Survey can be found [here](#). It is fast and easy. Fast lube operators can offer it to customers in hard copy or online entry format via Survey Monkey. An added benefit of the survey is that customers are simultaneously educated about their rights while providing crucial information. Based on initial survey results from 2016, the vast majority of customers didn't know about their MMWA rights until they took the survey.

National Conference on Weights and Measures (Engine Oil & Transmission Fluid)



**Percentage
of Fast Lube
Facilities
Affected: 65–100%**



Risk Level: High

Background

- From 2012-2014, AOCA was the lone installer advocate insisting on an amendment to address overbroad inactive/obsolete engine oil labeling. If not changed, the NCWM rule would have excluded ACEA-approved and OEM-approved engine oils. AOCA achieved the necessary regulatory amendment for labeling and receipt requirements to include all oils necessary at full service fast lube facilities during 2014.
- From 2012- 2013, AOCA was the lone installer advocate insisting that bulk engine oil distributors must follow the same invoice documentation requirements demanded of installers. AOCA achieved the necessary amendment during 2013 with an effective date of January 1, 2014. This new regulation of bulk oil distributors actually now provides added protection to fast lube operators in the event of mis-deliveries or off-spec deliveries, which are an increasing source of investigation by state regulators.
- In 2015, NCWM began the process of drafting amendments to TF regulation. There are multiple issues here including potential expansion of manufacturer liability to installers/retail, as well as potential prohibition of aftermarket TF products. Enforcement in CA against the use of converters with “multi-vehicle” fluid is currently underway. A regulatory proposal ruling out “suitable for use” products is pending as well.

Recommended Action

Ongoing work with national and state amendment processes affecting transmission fluid. Work with FTC on anti-competitive effects of NCWM/state enforcement of TF rules, including research on the transmission fluid market. If upheld, NCWM's OEM exclusivity approach could extend to other products.

Anti-Competitive Transmission Fluid Regulation–FTC Inquiry

Background

The Federal Trade Commission's Office of Policy Planning has begun investigating, per AOCA's request, the anticompetitive impact of state weights and measures regulations that make automakers' proprietary specifications the de facto minimum state specification that all competing fluids must claim to meet on labels and receipts. In doing so, the state regulators have bypassed the Magnuson Moss Warranty Act (MMWA)'s requirement that a manufacturer first prove a tied-in product is the only one that allows the warranted product to function properly before being able to require its use. AOCA is working with FTC to compile data on the transmission fluid marketplace that pinpoints the consumer impacts of requiring automaker-branded products in contravention of MMWA.

Recommended Action

Pursue development of an ad-hoc industry coalition and/or contributions to support AOCA's efforts to obtain and present the information supporting FTC's investigation.

Oil Change Interval Attacks



Percentage
of Fast Lube
Facilities
Affected: 100%



Risk Level: High

Background

California and New York legislators have proposed multiple bills to prejudice severe service oil change interval recommendations. California SB 778 originally would have made “normal” intervals—the longest intervals—the state standard, and any deviation could have subjected operators to penalty for fraud. The bill also originally would have made all fast lube operators “automobile repair dealers” whether or not they actually did any repairs. AOCA successfully lobbied to have the interval standard changed from “normal” to the entire interval range, so that only recommendations outside the interval range would require extra explanation and documentation. AOCA also successfully lobbied to create an Automotive Maintenance Provider carve-out from repair dealer regulations. Although the bill passed both houses, it was later vetoed by Governor Brown due to the Bureau of Automotive Repair’s objection.

Current Efforts

- Successfully fought New York legislation three years in a row.
- California SB 778 is the third attempt at this legislation; despite the automobile dealers throwing their weight behind SB 778, AOCA obtained a carve-out to protect “automotive maintenance providers” like classic fast lubes from having to comply with the most extensive automotive repair dealer regulatory requirements. The sponsor of SB778, Senator Ben Allen, is in the process of reintroducing the bill for the next legislative session.

Recommended Action

Proactive measures (1) Refine the “automotive maintenance provider” carve-out into a package suitable for application nationwide as automobile dealerships are expected to continue this push throughout the country; and (2) Develop and adopt an industry form on Approval for Service Recommendations to educate consumers, protect operators, and prevent further attacks on the fast lube model from automobile dealers/OEMs.

GF-6 Engine Oil Development and Rollout



Percentage
of Fast Lube
Facilities
Affected: 100%



Risk Level: Moderate

Background

There is no consensus between oil marketers and auto companies regarding GF-6A vs. GF-6B labeling and also no input from the installer level. The potential problem for installers is that upstream interests would prefer to not provide any warning to consumers regarding risk of misapplication, which leaves burden of both consumer education and consumer frustrations over price/misapplication on installers. Depending on the increase in product costs, consumers may try to further lengthen oil change intervals. Additionally, Ford Motors recently announced it won't use the GF-6 diesel standards. Instead, the company has released a new proprietary diesel engine oil WSS-M2C171-F1.

Recommended Action

Participate in development discussion; provide member education.

OSHA'S New Electronic Reporting Requirements for Some; Anti-Retaliation Rule for All



Percentage
of Fast Lube
Facilities
Affected: **100%**



Risk Level: **High**

Background

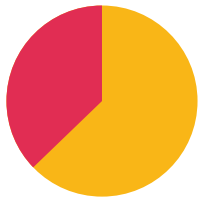
AOCA obtained clarification regarding the status of their electronic reporting “high risk” category, which includes NAICS 4413 “automotive parts, accessories and tire stores.” Since OSHA chose to use NAICS codes, NAICS coding policy applies. Although a business might do activities fitting into more than one code reference, NAICS does not double-up with multiple designations. Instead, they defer to whichever code represents the majority of a business’s revenue. If the majority of revenue comes from fast lube services, then NAICS code 811191 applies (non-high risk category). If the majority of revenue comes from tire sales, then NAICS code 4413 or a derivative of that category applies.

The anti-retaliation component of the rule applies to all employers—no exemptions—and prohibits discouraging workers from reporting an injury or illness. The final rule requires employers to inform employees of their right to report work-related injuries and illnesses free from retaliation; clarifies the existing implicit requirement that an employer’s procedure for reporting work-related injuries and illnesses must be reasonable and not deter or discourage employees from reporting; and incorporates the existing statutory prohibition on retaliating against employees for reporting work-related injuries or illnesses. Examples of retaliation or discrimination could include termination, pay reduction, loss of current position for a less desirable one, or any other adverse action that could dissuade a reasonable employee from reporting a work-related injury or illness. Another change is that OSHA can take action against an employer for retaliation even where an employee doesn’t file a complaint. The provisions were effective August 10, 2016, but OSHA delayed enforcement until November 1, 2016. AOCA provided a membership update in early September 2016.

Recommended Action

Ongoing member education.

Hazardous Communications Program Changes for Global Harmonization



Percentage of Fast Lube Facilities Affected: 65–100%



Risk Level: High if there is a failure to comply

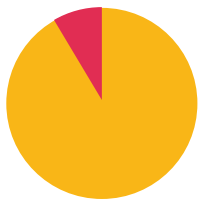
Current Efforts

- May 2012, AOCA published a member update on the upcoming changes to the HazCom program due to global harmonization, including the rolling compliance deadlines.
- November 2013, AOCA published another member update.
- Summer 2015, AOCA updated the Safety & Compliance Guide to reflect the latest deadlines and include relevant references from OSHA's recent enforcement guidance publication.

Recommended Action

Ongoing member education.

Walking-Working Surfaces and Personal Fall Protection Systems (Slips, Trips, and Fall Prevention) A/K/A “Pit Safety” Rule



Percentage of Fast Lube Facilities Affected: 90% U.S.



Risk Level: High

Effective Date: Final rule still pending.

Current Efforts

- 1994 AOCA initiated dialogue with OSHA regarding the use of a combination of methods to achieve ultimate safety result, especially with regard to busy facilities.
- 2003 OSHA proposed amendments to the regulation. AOCA submitted comments urging OSHA to officially recognize the combination method approach.
- 2010 OSHA proposes another version of the regulation that will officially recognize the efficacy of using a combination of methods (training, paint, signs, nets, etc.) to achieve the safety result. AOCA submitted comments in favor of the proposal with one exception: OSHA's proposed restriction of allowing only trained people within six feet of a service bay opening. AOCA asked for clarification that this would not be misconstrued to apply to customers.
- 2016 OSHA issues official update to its Walking and Working Surfaces Rule, formerly found at 29 CFR §1910.22(c). The guardrails and covers requirements are now located in new §1910.28 (duty to have fall protection) and §1910.29 (fall protection systems criteria and practices). As requested by AOCA, the final rule gives fast lube employers the flexibility to use a combination of controls to provide protection against employee falls in the workplace.

Recommended Action

Compliance education.

Lock-out Tag-out Rule



**Percentage
of Fast Lube
Facilities**

Affected: 100% US



**Risk Level: Rising as OSHA pursues
increased enforcement authority.**

Background

In 2008, OSHA started applying the Lock-out/Tag-out (LOTO) regulation to automobiles during maintenance and repair services. The basic point of LOTO is to prevent “the unexpected energization or startup of machines or equipment, or the release of stored energy” in a way that could cause injury to employees (29 CFR §1910.147(a) (1)(i)). In other words, if LOTO is successfully implemented, no employees can be injured while working on, in, near or with a machine because it started up without their control. In the case of automotive services, LOTO applies to facilities with and without lifts, and there’s a new twist for both on the horizon.

In the case of a facility with an automotive lift, the LOTO device is a physical lock. In addition, customers must hand over the vehicle’s startup device (key or fob or both) and, for obvious reasons, no customer would be allowed to remain in the vehicle. In the case of a facility with floor openings in service bays, the LOTO device is isolation of vehicle ignition keys or fobs. Historically, OSHA has distinguished “maintenance on automobiles, buses and over-the-road trucks where removal of the ignition key usually ensures that the engine cannot be started and the vehicle may be worked upon” from heavy construction equipment (<http://bit.ly/2h4g0yN>; 2007 Preamble to Final Rule, Major Issue #3). Since the advent of key fobs, additional steps such as using frequency-isolating cups or pouches may be necessary.

The new twist in the regulation is that OSHA has proposed to eliminate the word “unexpected” from the code in order to eliminate the use of warning systems in place of actual LOTO. Control of the lock-out must be in the hands of the person who is at risk if the machine starts up. If this change is implemented, increased enforcement attention will be paid to LOTO compliance across the board.

Recommended Action

Member compliance guidance.

DIYer Used Oil & PCBs



Percentage
of Fast Lube
Facilities
Affected: **100%**



Risk Level: **High**

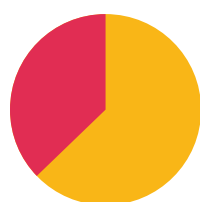
Background

Cleanup currently ranges from \$10,000 – \$50,000. EPA is considering a modification of the Toxic Substances Control Act regulations to focus on PCB cleanup rather than punitive fines against those who are trying to support proper management of it, like fast lubes that accept DIYer used oil. There is no cost-effective test to rule out PCBs at drop-off.

Recommended Action

Monitor and support the solution that best protects the DIYer recycling chain.

Used Oil Superfund Sites



Percentage of Fast Lube Facilities Affected: 65–100%



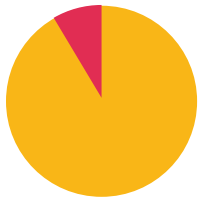
Risk Level: High, if identified as a potentially responsible party and the service station dealer exemption is unavailable.

Recommended Action

Because there have been over thirty used oil recycling Superfund sites and new ones continue to pop up (see below), AOCA recommends continuing member education on the service station dealer exemption; and monitoring of all government run cleanups to ensure the exemption is recognized.

- P&W Waste Oil Services, Inc. is located in Leland (Brunswick County) North Carolina, 450 feet east of Cape Fear River and next to a federally protected wetland. Closed in 2012 due to a variety of recycler bad acts—see full article below—the site contains soil and groundwater oil pollution including PCB contamination. For more information contact Sherryl A. Lane, EPA Community Involvement Coordinator, at (678) 575-7355
 - Facilities affected: all operators within used oil transportation range, including surrounding states.
 - Actions needed: member updates; potential intervention if EPA Region 4 ignores SSDE application process; consider pushing regions for SPCC and RCRA inspections and enforcement to prevent Superfund conditions; consider pushing for mandate on recyclers to maintain adequate financial assurance.
- From the mid-1990s to 2008, TC Waste Oil Services (“TC”) and St. Croix Waste Oil Services (“St. Croix Waste Oil”) in St. Croix, Virgin Islands, picked up and transported waste oil and other wastes containing hazardous substances from various businesses, primarily automotive. TC and St. Croix Waste Oil stored and disposed these wastes at the Site, which became contaminated with hazardous substances including lead, toluene, xylene and asbestos. EPA Region 2 has initiated a multi-million dollar cleanup. They continue to seek payment in 2016 from potentially responsible parties who had their waste picked up by either TC Waste Oil or St. Croix Waste Oil Services.
- Former landfill Operating Industries, Inc. Superfund Site, Monterey Park, CA, which was closed in 1984; i.e., EPA and states now getting into more landfills and reaching back for oily waste and auto/car wash related sludge (de minimis settlement proposed 1st quarter 2013 for \$1,624,928 includes Arroyo Car Wash Corporation, Encell Auto Parts Service, Inc., Consumers Oil Company, Cormier Chevrolet Company, Hacienda Car Wash, Inc., Hiro’s Transmission, Inc., Los Feliz Car Wash, North Hills Car Wash Company, Oil Well Service Company, Pacific Coast Drum Company, Western & Fourth Car Wash, Inc., and Westwood Car Wash).
 - Facilities affected: unless an owner purchased a facility that operated in the 1980s, liability is not anticipated for average fast lubes.
 - Actions needed: education; reconsideration of management practices for used oil filters and other wastes currently “allowed” in landfills.
- In 2015, Leach Oil Company Superfund Site (Los Angeles) representatives sent out another round of notices to new “potentially responsible parties,” most of whom properly recycled their used oil with a licensed used oil transporter, including Leach Oil. AOCA notified California members immediately with a request to contact headquarters if any notices were received.
- ESI Environmental Inc Site (Indiana used oil recycling facility operated 1999-2010) \$2 million cleanup
- Industrial Pollution Control (Mississippi used oil recycling facility operated 1991-1997) \$4 million cleanup
- Jack Goins Waste Oil (Tennessee used oil recycling facility operated 1985-1999) Final cleanup costs TBD
- Malone Services (Texas used oil recycling facility operated 1964-1997) \$56.4 million cleanup

Tire Pressure Monitoring Systems



**Percentage
of Fast Lube
Facilities
Affected: 90%**



Risk Level: Moderate to High

Background

There is a disconnect between automakers, consumers, and DOT. Automakers frequently install cheap materials that easily corrode and break, the average consumer rarely understands TPMS maintenance requirements, and DOT's National Highway Traffic Safety Administration (NHTSA) places the most responsibility on installers. This leaves installers open to consumer demands to eat the cost of replacing faulty TPMS equipment at an average cost of \$103.

Current Efforts

- Congress made TPMS mandatory by 2007. NHTSA developed regulations for TPMS that failed to require automakers to educate consumers regarding the maintenance of their new TPMSs, the costs associated with maintenance, and the frequency with which maintenance is required. Thus, consumers routinely arrived at fast lube facilities with malfunctioning TPMS equipment—like corroded sensor valves—and were caught completely off-guard by both the problem and the costs involved. More often than not, installers had to eat the cost—\$103 average per instance—or risk losing confused and agitated customers forever. Many consumers still choose to undermine their own safety by avoiding expensive repairs. AOCA provided member compliance guidance from 2010 – 2014.
- In 2011, AOCA worked with a coalition of lateral automotive industry organizations to bring the problems associated with the TPMS regulation to NHTSA's attention and ask for a remedy.
- In 2012, NHTSA requested comments on the economic impact of its regulations on small entities. AOCA submitted comments, once again outlining the ongoing problems experienced at the install level.
- In 2015, NHTSA proposed to study why the effectiveness of the TPMS program for older vehicles is so much less than new cars and what can be done to increase it. AOCA submitted comments urging NHTSA to undertake a more comprehensive investigation of the regulation by engaging suppliers and professional establishments who can explain the real world issues associated with TPMS repair.

Recommended Action

Consider participating in the upcoming study; continue collecting real world data on consumer misunderstanding of the regulation and the related costs to the fast lube industry.



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SINCE 1987

About AOCA

The Automotive Oil Change Association (AOCA) is a non-profit trade organization representing the convenient automotive service industry. The association was founded in 1987 and is headquartered in Chicago, Illinois. AOCA is dedicated to enhancing the competency of fast lube owners, educating the public about the benefits of preventive automotive maintenance and maintaining a favorable business environment for the industry.

AOCA members adhere to a Code of Ethics and a Standard of Service Excellence. Members provide "Professional Service at YOUR Convenience" to the motoring public, helping to extend the life and safety factors of their motor vehicles through quality maintenance.

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