Kentucky Automobile Dealers Association
The Voice of Automobile Dealers in Kentucky

STOLL KEENON OGDEN PLLC

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## Winter is Coming Part 3: Assessing Your Risk Assessment

**DISCLAIMER**: The information in this document may change over time with new information and developments. All content and materials are for general information purposes only. It does not provide, and is not intended to constitute, legal advice. Important: As necessary, dealers should consult an attorney familiar with dealership operations, Federal, State and/or local laws at issue.

This article is the third in a series of materials to help your dealership with the appropriate planning and implementation of the necessary policies and procedures required by the FTC's amended Safeguards Rule, the vast majority of which require dealer compliance by December 9, 2022.

The expanded FTC rules require that dealerships conduct regular risk assessments which examine the dealership's information security system and existing policies related thereto. The risk assessment must be in writing and should evaluate internal and external risks to the confidentiality and integrity of customer information that could result in misuse, disclosure, or other compromise of that information. The assessment should also consider the sufficiency of safeguards currently in place to protect consumer data.

The rule requires these risk assessments to take place "periodically" but does not specifically define how often the assessments should occur. In practice, these assessments should occur at least annually, and potentially semi-annually depending on the amount of consumer data you maintain.

Your written risk assessment must address, at a minimum:

1. Criteria for the evaluation of risk: essentially this means the categories of risks that you considered (examples include: remote access by employees; methods of sharing information with vendors; phishing and/or ransomware; protection of information physically stored within the dealership);

2. Criteria for the assessment of the confidentiality of the information: this means the way you examined the potential risk (examples include: consideration of the personnel with access to electronic and physical sources of information; limitations on service provider or vendor access to consumer information); and

3. Description of how identified risks will be mitigated: you should document

the methods that will be used to address identified risks, including specific action and controls that can be implemented.

Your risk assessment should also include contracts with third-party vendors, including manufacturers and lenders as well as any third-party vendors who have access to customer information. You have an affirmative duty to ascertain the safeguards that third-party vendors have in place to protect your data. In some instances, contracts will have to be modified or perhaps terminated. You will need to make this evaluation in the event any new contracts are executed between your periodic risk assessments.

The purpose of the risk assessment requirement is to make sure that dealerships are not only protecting the security of customer information, but also that they are aware of the threats to that security. By requiring these "periodic" examinations, the FTC is forcing dealers to stay up-to-date on the threats to the data in their system and to have proactive measures in place to guard against those threats. While these requirements create a short-term burden, they will result in a long-term benefit if they prevent a data breach within your dealership.

Again, the amended Safeguards Rule allows dealerships to appoint third-party vendors to assist with these new requirements and as a vetted KADA Preferred Partner, we recommend the resources and services that ComplyAuto offers. You can find their contact information below.

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