



We have heard from several Nissan dealers about a current incentive program. Their concerns are that goals of the program are set in such a manner that some dealers will be unfairly excluded from the benefits of the program.

We wanted to remind you that Virginia law provides protections for dealers. Under Virginia Code, manufacturers are prohibited from discriminating among dealers with incentive programs that are not “functionally available” to all dealers.

§ 46.2-1568.1. Discrimination by manufacturers or distributors prohibited.

No manufacturer or distributor, or any officer, agent, or representative of either, shall discriminate against a dealer holding a franchise of the manufacturer or distributor in favor of another dealer or other dealers of the same line-make in the Commonwealth by:

2. Using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the dealer or later, that results in the sale or offer to sell a new motor vehicle to a dealer at a lower price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is available to another dealer in the Commonwealth during a similar time period. This subdivision shall not prohibit a promotional or incentive program that is functionally available to competing dealers of the same line-make in the Commonwealth on substantially comparable terms;

In order for a program to be functionally available, it must be based on valid performance measures that all dealers can achieve. Virginia Code protects dealers here as well by giving the dealer the right not only to challenge the standards, but to demand that the manufacturer disclose how those standards are being applied. And the statute requires any survey used to be based on a statistically valid sample.

§ 46.2-1572.4. Manufacturer or distributor use of performance standards.

Any performance standard or program that is used by a manufacturer or distributor for measuring dealership performance and may have a material effect on a dealer, and the application of any such standard or program by a manufacturer or distributor, shall be fair, reasonable and equitable, and if based upon a survey, shall be based upon a statistically valid sample. Upon the request of any dealer, a manufacturer or distributor shall disclose in writing to the dealer a description of how a performance standard or program is designed and all relevant information used in the application of the performance standard or program to that dealer.

Any dealer who has an issue with this program can address those concerns to Nissan directly, and ultimately, to the Virginia DMV Commissioner through the hearing process. Thank you.