



**June 24, 2020**

In today's update, read about Phase Three of Governor Ralph Northam's reopening plan, "Forward Virginia." The Governor announced all of Virginia will enter Phase Three next Wednesday (July 1). Also, with the deadline to apply for a Paycheck Protection Program (PPP) loan less than a week away, check out the latest guidance from the U.S. Small Business Administration (SBA) and U.S. Treasury, plus helpful resources from NADA.

**All of Virginia will enter Phase Three of the Governor's reopening plan next Wednesday (July 1).**

Yesterday (June 23), Gov. Northam announced all of Virginia will enter Phase Three of the "Forward Virginia" reopening plan next Wednesday (July 1).

We are awaiting an executive order that will implement Phase Three and should provide clarity on what will be required of essential retail businesses — *i.e., your service departments*. However, the Governor has published [Guidelines for All Business Sectors for Phase Three](#), which lay out the mandatory requirements for non-essential brick and mortar retail — *i.e., your sales and finance departments*.

We cover that below, plus what we know about face masks, social gatherings, and enforcement under the new phase. Of course, we'll keep you apprised of any new executive order(s) stipulating new requirements for any dealership department(s), your employees, and/or your customers.

Also, we should note the Virginia Safety and Health Codes Board today (June 24) considered emergency regulations proposed by the Virginia Department of Labor and Industry (DOLI). If you recall, the Governor asked DOLI to consider workplace requirements and guidelines regarding COVID-19. We'll know soon what those regulations entail and when they will be effective. We'll then provide you with an analysis of that information.

Lastly, on the topic of workplace safety and the coronavirus, the Governor has expressed his intent to identify nursing home facilities with positive COVID-19 cases. It is possible the state will also identify other businesses where an employee has tested positive. As we have suggested since the pandemic started, it is important you adhere to Virginia and federal requirements, including recommendations from the U.S. Centers for Disease Control and Prevention (CDC), to mitigate the spread of COVID-19. We have also recommended and still suggest you record the steps you are taking to promote a safe and healthy environment for your employees and customers.

***Phase Three Analysis***

***What localities will enter Phase Three on July 1?***

Every locality in Virginia will enter Phase Three next Wednesday (July 1), including the Northern Virginia Region and City of Richmond.

***What does Phase Three mean for service departments?***

That is to be determined. For Phases One and Two, the Governor detailed requirements for essential retail businesses, including auto service departments, in corresponding executive orders. He has yet to issue such an order for Phase Three.

- That said, the first two phases indicated essential retail businesses should comply with the best practices described in the Guidelines for All Business Sectors. We can expect the same this time around, meaning continued compliance with physical distancing, enhanced cleaning and disinfection, and enhanced workplace safety best practices, plus a posting of CDC materials as stipulated in the Guidelines. Again, it's unclear whether an executive order implementing Phase Three will require more, but we will let you know.

### [What does Phase Three mean for sales and finance departments?](#)

Sales and finance departments **must** comply with the mandatory provisions for non-essential brick and mortar retail stipulated in the Guidelines for All Business Sectors for Phase Three. Failure to comply may lead to closure. That means continued compliance with physical distancing, enhanced cleaning and disinfection, and enhanced workplace safety best practices, plus a posting of CDC materials as stipulated in the Guidelines.

Also, franchised auto dealership sales and finance departments must:

1. Post signage at the entrance that states that no one with a fever or symptoms of COVID-19, or known exposure to a COVID-19 case in the prior 14 days, is permitted in the establishment.
  - *Note: See [this example](#).*
2. Post signage to provide public health reminders regarding physical distancing, gatherings, options for [high risk individuals](#), and staying home if sick (samples included at the bottom of [the Guidelines](#) and [here](#), [here](#), [here](#), [here](#), and [here](#)).
3. Employees and patrons must maintain at least six feet of physical distancing between individuals who are not members of the same household at all times.
4. Assist customers in keeping at least six feet of space between individuals or households while shopping and waiting in line. Mark floors in six-foot increments in areas where customers will be congregating or standing in line such as cashier areas.
5. If seating is available, provide a minimum of six feet between tables; if tables are not movable, parties must be spaced at least six feet apart.
6. Employees working in customer-facing areas are required to wear face coverings over their nose and mouth, such as using [CDC Use of Cloth Face Coverings guidance](#).
  - *Note: Pursuant to Executive Order 63, all customers aged 10 and over must wear face masks at your dealership, no matter the department. Employers must provide face coverings to employees, and all employees must wear them when facing customers and when social distancing cannot be strictly maintained. Failure to comply may result in store closure or other penalties. We recommend all your employees wear face coverings, even when interacting with other employees. Use common sense. See [our analysis of Executive Order 63 \(the face mask requirement\)](#) and [the Governor's FAQs](#) for more.*
7. Clean and disinfect frequently contacted surfaces — *e.g.*, countertops and bathroom surfaces — at a minimum, every two hours.

### [Does Phase Three change the face mask requirement for dealership employees?](#)

Based on the information available, no. All employees must still wear face coverings when working in customer-facing areas.

The [Phase Three Guidelines](#), including mandatory requirements for non-essential brick and mortar retail therein, require non-essential brick and mortar retail employees — *i.e.*, *those in the sales/finance departments* — to wear face coverings over their nose and mouth, such as using [CDC Use of Cloth Face Coverings guidance customers](#).

Also, there has yet to be any change to the Executive Order 63 requirement that employees of essential retail businesses — *i.e.*, *service departments* — must wear face coverings when working in customer-facing areas.

We continue to recommend that all your employees wear face coverings, even when interacting with other employees.

***[What about face masks for customers?](#)***

Because Executive Order 63 remains in effect until further notice, all customers ages 10 and over must still wear face masks when entering, exiting, traveling through, and spending time in the dealership absent an exception (such as a health reason for not wearing a mask). This requirement applies to both essential and non-essential brick and mortar retail, meaning it applies to customers in both the service and sales/finance departments. Some customers may refuse to comply. Consult your organization’s legal counsel for what to do if a customer refuses to comply. Read [our analysis of what’s required under Executive Order 63 \(the face mask requirement\)](#) and [the Governor’s FAQs](#) for more.

***[Does Phase Three change anything for social gatherings and enforcement?](#)***

All public and private in-person gatherings of more than 50 individuals are prohibited; however, the presence of more than 250 individuals performing functions of their employment is not considered a “gathering.”

Failure to adhere to the requirements in an executive order implementing Phase Three may result in store closure and/or a Class 1 misdemeanor and up to one year in jail. If it’s like the executive orders for Phases One and Two, any state agency with regulatory authority over Virginia’s franchised auto dealerships’ sales/finance departments may enforce the Phase Three-related order to the extent permitted by law. The Virginia Department of Health may have the authority to enforce the requirements the new executive order places on non-essential brick and mortar retail. The State Health Commissioner might also be permitted to seek injunctive relief for violation of any such order. Further, noncompliance with the such an order could jeopardize the continued ability of any VADA member to remain open during this difficult time. **Do not underestimate the government’s power to shut down franchised auto dealership operations. Use common sense, and err on the side of caution.**

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**SBA and Treasury issue new guidance on the PPP. June 30 is the last day to apply for a PPP loan.**

Last week, the SBA and Treasury issued new guidance relating to the PPP. The first is a [New Interim Final Rule](#), revising two prior Interim Final Rules, to conform with changes made by the Paycheck Protection Program Flexibility Act (PPPFA). NADA provided thorough analysis of the PPPFA in its webinar, [The Paycheck Protection Program Flexibility Act of 2020: Impact on the Use and Forgiveness of Loan Proceeds](#). SBA and Treasury also issued an updated [Standard Forgiveness Application \(with instructions\)](#) to incorporate those PPPFA changes.

Additionally, the SBA and Treasury issued a simplified [EZ Forgiveness Application \(with instructions\)](#) for use by PPP borrowers who can demonstrate they:

- Are self-employed and have no employees; OR
- Did not reduce the salaries or wages of their employees by more than 25 percent, and did not reduce the number or hours of their employees; OR
- Experienced reductions in business activity as a result of health directives related to COVID-19, and did not reduce the salaries or wages of their employees by more than 25 percent.

SBA and Treasury indicated borrowers may evaluate their eligibility for the headcount and pay level forgiveness reduction avoidance safe harbors as of the date their loan forgiveness applications are filed.

Continuing with PPP guidance, SBA and Treasury also released a new [Lender Match](#) tool to pair small businesses with Community Development Financial Institutions, Minority Depository Institutions, Certified Development Companies, Farm Credit System lenders, microlenders, and traditional smaller-asset lenders in the PPP.

Lastly, the final day to apply for a PPP loan is Tuesday, June 30. Be sure to review NADA's updated [Analysis of PPP Loans: Use of Proceeds and Forgiveness](#) and [CARES FAQs](#) for more information. For other federal programs, consider these NADA resources:

- [Summary of Federal Aid Programs](#)
- [New Federal Emergency Leave Mandates FAQs](#)
- [Main Street Lending Program FAQs](#)

More than ever, it is a pleasure to serve the new car and truck dealers of Virginia.

Sincerely,

A handwritten signature in black ink that reads "Donald L. Hall". The signature is written in a cursive style with a large initial "D".

Donald L. Hall  
President and CEO