



June 3, 2020

In today's message, see our analysis of Governor Ralph Northam's Executive Order 65, which brings most of Virginia into Phase Two of the Governor's reopening plan this Friday (June 5). Read about pending federal legislation that would provide enhanced flexibility to the Paycheck Protection Program (PPP). And watch Bloomberg's recorded webinar on "The Auto Industry Road to Recovery."

Most of Virginia will enter Phase Two of the Governor's reopening plan this Friday (June 5).

Yesterday (June 2), Gov. Northam announced most of the Commonwealth will enter Phase Two of the "Forward Virginia" reopening plan this Friday (June 5). To implement this change, the Governor issued [Executive Order 65](#) and corresponding [Guidelines for All Business Sectors for Phase Two](#). As a reminder, each phase is expected to last two to four weeks or more. The Governor indicated he will speak more to Phase Two at a press conference tomorrow (June 4).

[What localities will enter Phase Two on June 5?](#)

Every locality in Virginia *except for* the Northern Virginia Region (as defined in [Executive Order 62](#)) and the City of Richmond will enter Phase Two this Friday (June 5). Northern Virginia and Richmond did not enter Phase One until May 29. More information on those localities is at the bottom of this analysis, but one might expect Northern Virginia and Richmond to enter Phase Two on June 19, health data permitting.

[What does Phase Two mean for my dealership?](#)

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

Beyond an increase to the limit on social gatherings, it appears there are no differences between what is currently required for Virginia's franchised auto dealers under Phase One and what will be required under Phase Two.

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

No. All employees must still wear face coverings when working in customer-facing areas. Like Executive Order 61 before, Executive Order 65 requires 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](#).

Executive Order 65 does not alter the requirement under Executive Order 63, 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?](#)

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.

Because Phases One and Two are the same with respect to restrictions on auto dealers and their customers (beyond the new social gatherings limit), you should be familiar with the following. However, for your convenience, we've provided a breakdown of the Phase Two requirements below. Please reach out with any questions.

Non-Essential Brick and Mortar (Sales and Finance Departments)

- Like Executive Order 61 (Phase One), Executive Order 65 (Phase Two) treats dealership sales and finance departments as non-essential brick and mortar retail.
- Sales and finance departments **must** comply with the mandatory provisions for brick and mortar retail stipulated in the [Guidelines for All Business Sectors for Phase Two](#). Failure to comply requires 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.
- It also means the following continued requirements for Virginia's franchised auto dealerships. Stores 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. Limit occupancy to 50% of the lowest occupancy load on the certificate of occupancy.
 - *Note: This requirement applies to both customers and dealership personnel. If you do not know your store's lowest occupancy load, your locality's building inspector office may have the answer. If your lowest occupancy load is 100, you are permitted 50 employees and customers or less physically present at any one time. Because others outside your organization may question your compliance with the new occupancy limitation, you should obtain and/or maintain documentation proving your lowest occupancy load.*
 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. Meeting rooms and other enclosed spaces should be closed to customers.
 7. 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 ten 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 continue to 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.*

8. Clean and disinfect frequently contacted surfaces — e.g., countertops and bathroom surfaces — at a minimum, every two (2) hours.
9. No self-service food. Self-service beverage areas must use beverage equipment designed to dispense through a contamination-free method.
 - *Note: It is our understanding this means only vending machines are permitted for food and only vending machines and/or water coolers are permitted for beverages, so long as the machines and/or coolers are designed to dispense through a contamination-free method and frequently sanitized.*

Essential Retail Businesses (Service Departments)

- Like Executive Order 61 (Phase One), Executive Order 65 (Phase Two) treats automotive parts, accessories, and tire retailers as well as automotive repair facilities as “essential retail businesses.”
- Service departments should comply with the [Guidelines for All Business Sectors for Phase Two](#) as best practices. 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.
- Other requirements listed above that are mandatory for sales and finance departments do not extend to service departments under Executive Order 61 or the Guidelines.
- The only limitation on the number of service and parts customers in the dealership is the practical one of ensuring proper physical distancing.
- Pursuant to Executive Order 63, all customers ages 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 continue to 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.

Social Gatherings and Enforcement of Executive Order 65

- All public and private in-person gatherings of more than 50 individuals are prohibited; however, the presence of more than 50 individuals performing functions of their employment is not considered a “gathering.”
- Failure to adhere to the requirements in Executive Order 65 may result in store closure and/or a Class 1 misdemeanor and up to one year in jail. Any state agency with regulatory authority over Virginia’s franchised auto dealerships’ sales/finance departments may enforce Executive Order 65 to the extent permitted by law. The Virginia Department of Health has the authority to enforce the requirements Executive Order 65 places on non-essential brick and mortar retail. The State Health Commissioner may also seek injunctive relief for violation of the Order. Further, noncompliance with the 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.**

Northern Virginia and Richmond

When most of the state transitions to Phase Two on Friday (June 5), the Northern Virginia Region and City of Richmond will remain in Phase One, with restrictions as stipulated in the amended Executive order 61 and corresponding guidelines. See [our analysis of Phase One for more](#). But again, while individuals and other industries face less restrictions under Phase Two than under Phase One, the two phases offer the same restrictions for Virginia’s franchised auto dealerships.

Northern Virginia and Richmond are on a timeline for reopening two weeks behind the rest of Virginia. With most of the state entering Phase Two on June 5, Northern Virginia and Richmond might move to Phase Two on June 19.

Accomack County also did not enter Phase One until May 29 due to local COVID-19 concerns, especially at a local poultry facility. The Governor said that situation is under control; Accomack will enter Phase Two on Friday (June 5).

It appears critical changes to the PPP are on the way.

On May 21, NADA joined a large group of trade associations in [a letter](#) to Congress, requesting modifications to the PPP that would make the program more flexible for borrowers nationwide.

Last week (May 28), the U.S. House of Representatives passed a bill to that effect. [According to NADA](#), the legislation would:

- Reduce from 75% to 60% the percentage of forgivable expenses that must be allocated to payroll costs;
- Extend the covered period for forgiveness calculations from eight weeks to 24 weeks from the origination date of the loan;
- Expand the timeframe for making the determination for rehiring from June 30 to Dec. 31, 2020;
- Provide partial forgiveness reduction relief in the event a borrower can document that it is unable, on or before Dec. 31, 2020, either (1) to rehire or replace individuals who left its employ during the pandemic or (2) to return to its pre-COVID level of business activity;
- Repeal the CARES Act provision that barred PPP forgiveness recipients from deferring employer payroll taxes.

An article yesterday (June 2) in [The Washington Post](#) suggested businesses would also have up to five years rather than two years to repay money owed on the loan. The article reported on concerns about the bill, such as whether any of the loan is forgivable if a business does not use at least 60% of it on payroll. But if it doesn't pass the Senate, it could be a while before differing legislation moves forward. *The Washington Post* indicates the House isn't scheduled to vote again until the end of the month.

Senate Majority Leader Mitch McConnell (R-KY) has indicated the upper chamber will soon consider the House's measure. According to [The Post](#), he stated Monday (June 1), "I hope and anticipate the Senate will soon take up and pass legislation that just passed the House by an overwhelming vote of 417-1 to further strengthen the Paycheck Protection Program so it continues working for small businesses that need our help."

The House bill is more expansive than what the Senate proposed to enhance PPP loan flexibility. For instance, the Senate version would have kept the 75% requirement in place and only lengthened the forgiveness period from eight weeks to 16 weeks according to [this article from Roll Call](#).

Should the Senate pass the House legislation and the President enact it, we anticipate modifications to NADA's [preliminary guidance on PPP loan use and forgiveness](#) and [CARES Act FAQs](#). Click [here](#) for an SBA report of PPP loan activity through May 30, 2020.

In case you missed it: Check out Bloomberg's recorded webinar on "The Auto Industry Road to Recovery."

Last week, Bloomberg Media Group and Bloomberg Intelligence held a webinar to contemplate what lies ahead for the auto industry considering the global pandemic. The roughly hour-long discussion featured Kevin Tynan, Global Director of Automotive Research with Bloomberg Intelligence; Chris Rovzar, Editorial Director of Bloomberg Pursuits; and Hannah Elliott, Cars Columnist with Bloomberg Pursuits.

Among other observations, Tynan remarked that while April 2020 was worse for the American auto market than any month in the 2008 global financial crisis, he expects a much quicker recovery for the industry than we had after the Great Recession. Then, a financial crisis made obtaining credit and buying cars difficult. Today, interest rates are low, and credit is available, making vehicles cheap and easy.

If you haven't already, be sure to catch the full discussion. Bloomberg has made the recorded webinar available [here](#).

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, prominent "D" and "H".

Donald L. Hall
President and CEO