



BULLETIN #26/2020
March 26, 2020

CORONAVIRUS UPDATE #12

**U.S. SENATE PASSES COVID-19 STIMULUS #3, WITH PRES. TRUMP'S APPROVAL -
HOUSE TO ACT NEXT**

MSADA-OCD WEBINAR ON STIMULUS LAWS - MON., MARCH 30, 11 A.M.

COMPLIANCE REMINDER - OFF-SITE TRANSACTIONS

**RMV EXPANDS SPRINGFIELD SERVICE CENTER FOR B2B/IRP TRANSACTIONS -
JOINS WILMINGTON, MILFORD SERVICE CENTERS**

**REMINDER - GET YOUR DEALER PLATES REGISTRATION RENEWAL APPLICATION
FILED ASAP**

REMINDER ON EMERGENCY RULES FOR INSPECTION STICKERS

[This bulletin supplements our previous Bulletins #11 and #16 through #25 on this subject matter. These bulletins are intended to be cumulative so we can avoid repeating the same information.]

U.S. Senate Passes Coronavirus Stimulus #3 - What Does \$2 Trillion Cover?

[The following information is derived from materials provided by NADA, Associated Industries of Massachusetts, and other sources.]

Late last evening, the U.S. Senate passed the nearly \$2 trillion Coronavirus Aid, Relief, and Economic Security (CARES) Act. This legislation, the third of three stimulus bills designed to address economic disruption caused by the Coronavirus (COVID-19) crisis, would be extremely beneficial for dealerships of all sizes and includes generous and unprecedented provisions to help provide liquidity for dealerships and to help businesses keep their employees on the payroll.

The House of Representatives is expected to vote on the Senate measure tomorrow; and the President has pledged to sign the bill into law quickly.

NADA advocated for provisions included in the Senate bill, such as new federal funding to cover operational and payroll expenses for small businesses through June 30, deferring payroll tax payments for employers, and other important tax relief. NADA continues to advocate for the broadest possible



business relief to help dealerships continue in operations and retain employees.

The following provides a **preliminary** summary of provisions of most interest to franchised dealers.

Small Business Loan Provisions

A completely new, temporary lending program to aid small business. The bill would provide \$349 billion to support loans through a new Paycheck Protection Program, which Congress designed to keep employees on the payroll and save small businesses. The Small Business Administration (SBA) would start up a completely new program that would only nominally be part of the existing SBA Section 7(a) loan program. To expedite the funding of the new loans, the Treasury Department and SBA would expand the number of participating banks and credit unions, and captive finance companies may also be included.

Minimal eligibility requirements. Any business operational on February 15, 2020, that paid salaries and payroll taxes would be eligible, but there is a limit of no more than 500 employees. Fortunately, the bill includes provisions to waive normal affiliation rules which should be applicable to many dealers. For dealers, there would be no test for total revenue.

Borrower certification to obtain loan. Borrowers would be required to make a good-faith certification that the loan is necessary due to economic conditions caused by COVID-19 and that it would use the funds to retain workers and maintain payroll, lease, and utility payments.

Loans have terms NOT found in traditional bank loans. Lenders would not require application fees, closing costs, collateral, or personal guarantees. The maximum interest rate would be 4%, and the first six months' payments (principal and interest) would be automatically deferred. Finally, the lenders would not be expected to perform credit analysis, because the loans would be 100% guaranteed by the SBA.

Maximum loan amount. The maximum amount would be 250% of an employer's average monthly payroll (based on a 12-month look back from the date of the loan), but NOT MORE than \$10 million.

Permitted uses of the loan. The loan could be used for "payroll costs", which would include salary, commission, or similar compensation (up to an annual rate of pay of \$100,000 per employee); employee group health care benefits, including insurance premiums; retirement contributions; and covered leave from February 15, 2020, to June 30, 2020. Permitted uses also would include payments of interest on mortgages, rent, utilities, and interest on any other debt obligations that were incurred before February 15, 2020.

Loans may be forgiven. In general, borrowers would be eligible for loan forgiveness equal to the amount of certain expenses spent during an eight-week period after the origination date of the loan. These expenses are payroll costs, interest payments on any secured debt incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for



which service began before February 15, 2020.

Percentage of employee retention related to amount of loan forgiveness. The amount forgiven would be reduced proportionally by any reduction in employees retained compared to the prior year, and by the reduction in pay of any employee in excess of 25% of the employee's prior-year compensation. However, to encourage employers to rehire any employees who have already been laid off due to the COVID-19 crisis, borrowers that rehire previously laid-off workers by June 30, 2020, would still qualify and not be penalized for having a reduced payroll during the loan period.

No effect on federal income tax. Canceled indebtedness under this program would not be included in the borrower's taxable income.

Loan amounts not forgiven. Any loan amounts not forgiven at the end of one year would be carried forward as an ongoing loan with terms of a maximum of 10 years at 4% interest or less.

Tax Provisions Applicable to All Businesses

The CARES Act contains many dealer-friendly tax provisions that would assist dealers in maintaining liquidity during the disruptions caused by the ongoing coronavirus outbreak.

Net operating loss (NOL) carry-back. Dealers would be permitted to offset losses in 2018, 2019, and 2020 against profits from the prior five years. NOL carryback was previously eliminated by the Tax Cuts and Jobs Act (TCJA) in 2017. This provision may provide dealers with losses in 2020 with substantial refunds. Losses that are used to offset pre-TCJA profits, which were taxed at a higher rate, would be refunded at pre-TCJA tax rates, providing an additional boost.

Modification on losses for taxpayers other than corporations. The TCJA generally limited the amount of losses non-corporate taxpayers, including pass-throughs, could claim to \$500,000. Under the bill, this limitation would be suspended, allowing dealers to utilize excess business losses along with the new NOL carryback provisions to access critical cash flow.

Qualified improvement property (QIP) technical fix. The TCJA intended for businesses to deduct improvements made to retail property immediately under the TCJA's bonus depreciation provisions, but due to a drafting error the depreciation lifespan was set at 39 years. This bill would correct this error retroactive to 2018. Dealers with significant outlays on QIP in previous years should consider amending their 2018 and 2019 returns to claim the deductions and receive a refund.

Interest deductibility limit increased. The TCJA limited the deductibility of business interest to 30% of a dealership's adjusted taxable income, except for floor plan financing interest, which remained 100% deductible. The bill would allow businesses to deduct up to 50% of their adjusted taxable income for 2019 and 2020. Dealers should note that, coupled with the proposed IRS rules on the interplay between bonus depreciation and floor plan financing interest, if their total business interest,



including floor plan financing interest, amounts to less than 50% of adjusted taxable income for these years, they may also be able to avail themselves of the bonus depreciation provisions in TCJA. Dealers unable to use full expensing in 2019 due to interest expenses between 30% and 50% of their adjusted taxable income may be able to generate refunds by filing an amended 2019 return.

Employee retention credit. Dealers who have been forced to close their business due to a government-mandated shutdown would be allowed a refundable payroll tax credit for retaining their employees. The credit would be generally available to dealers whose operations have been fully or partially closed due to a government mandate and whose gross receipts have declined by more than 50%. For dealers with 100 or fewer employees, all employee wages would qualify for the credit regardless of whether the business is shut down or not. The credit would be limited to the first \$10,000 of compensation paid per employee. This credit would be available through the end of 2020.

Delay of payroll taxes. The bill would allow businesses to delay the 6.2% employer portion of the Social Security payroll tax for the remainder of 2020. The delayed tax liability would then be paid back apportioned equally over the following two years.

Once the House passes the bill, we will provide the full details of the \$2 trillion package, including the new unemployment payment rules, the direct payments to citizens, and the various funding programs Congress will be lading out during the Coronavirus crisis.

MSADA-OCD Webinar to Help Put the Pieces Together

The Senate has now passed the third stimulus bill this month to help employers and employees get through the Coronavirus crisis. We anticipate (big step right now) the House will approve the bill by the end of this week and President Trump will sign it into law.

To help put all the pieces together for our member dealers, our accounting partner, O'Connor & Drew P.C., is providing a complimentary webinar specifically for auto dealerships entitled "*Navigating Your Dealership Amid the COVID-19 Crisis.*" The webinar will provide an overview of recent tax changes and how these changes will impact dealerships, address the implications of the newly passed Round #3 stimulus package, identify ways in which dealerships can free up cash, as well as discuss other critical business considerations for dealers during this unprecedented and unpredictable time.

Date and Time: Monday, March 30, from 11am - 12pm.

Join the webinar (audio and video) via this link: <https://join.me/OConnorandDrew>

Dial-In: 781-666-2350 x 833 338 151

Compliance Reminder - Off-Site Deliveries: Three-Day Right of Rescission, Contract Notice Provision



We have provided guidance on this topic several times previously. Today is a great time for this reminder, as many transactions are now being consummated outside of the dealership due to the temporary restrictions on dealership sales operations put in place by Governor Baker's emergency order dated March 23, 2020, to combat the Coronavirus (COVID-19) crisis. Consequently, dealers must take the necessary steps to ensure that they do not violate the law.

Under MGL Chapter 93, Section 48, if a contract for the sale or lease of goods or services with a value in excess of \$25 and primarily for personal, family, or household purposes is consummated at a location other than the address of the seller or lessor, the contract may be canceled unilaterally by the buyer within three days. Additionally, certain notices must be given to the buyer about this right to cancel.

What does this mean in relevant layman's terms? Generally, a vehicle sale is "consummated" when the customer takes delivery of the vehicle after executing a sale or lease agreement or making full payment.

When consummating a sale or lease by delivering a vehicle away from the dealership, the notice provisions of Chapter 93, Section 48 must be observed. The statute details the language that must be provided to the consumer. Copied below is a version of the necessary disclosure that can be easily edited by the dealership. The disclosure was prepared by and shared here with the permission of MSADA associate member law firm Burn & Levinson. In addition to providing the language to the consumer on a separate form, the purchase contract should also include a reference to the form so that the consumer cannot claim later that they did not receive the required notice. Make sure that the consumer signs and dates the disclosure form.

Dealerships must take other considerations into account when consummating a deal that triggers the protections of this law. For example, the dealership should wait until the three-day period has passed before assigning the loan, in case the customer exercises their right to rescind the deal. Additionally, the dealer should hold on to any trade-in received in the transaction for the duration of the rescission period.

[INSERT DEALERSHIP LOGO]

NOTICE OF CANCELLATION

DATE: _____

You may CANCEL this transaction, without any penalty or obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any vehicle traded in, any payments made by you under the contract or sale, and



any negotiable instrument executed by you will be returned within **TEN BUSINESS DAYS** following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [INSERT DEALER NAME AND ADDRESS] **NO LATER THAN MIDNIGHT OF [INSERT DATE THAT IS 3 DAYS AFTER SALE]**.

I HEREBY CANCEL THIS TRANSACTION.

Date: _____

Buyer's Signature: _____

RMV Expands Springfield Service Center for B2B/IRP Transactions

Due to the evolving situation with the Coronavirus (COVID-19) crisis and in an effort to protect both RMV staff, customers, and business partners, the Massachusetts Registry of Motor Vehicles continues to evaluate how best to serve our business customers.

Beginning today, March 26, the **Springfield Service Center will accept B2B/IRP drop-off transaction processing**. The RMV's B2B/IRP Centers at the **Milford and Wilmington Service Centers** also remain open for B2B/IRP drop-off services for their critical business partners.

In following "social-distancing" practices for you and the RMV staff, these facilities and services will be for **drop-off transactions/bundles only** and not serve or allow entry to the general public. You will not be allowed to 'wait' in any these locations for pick-up.

The RMV will continue to serve members of the general public at additional locations, consolidated into the RMV's larger Service Centers, and the RMV will be redeploying teams from nearby, closed



offices to ensure staffing resources are available to assist their customers and you.

Please note, that while a full list of those open facilities will be available to the public at [Mass.Gov/RMV](https://www.mass.gov/rmv), the B2B/IRP Centers **will not** be listed, and any B2B/IRP services appearing at those facilities will be redirected to Milford, Springfield, and Wilmington RMVs.

Reminder - Dealer Plates Registration Sticker Renewals, March 31

Dealer plate registrations expire on March 31, 2020. If you have not yet submitted your application, it should be mailed to the Section 5 department. Mail is the only option for renewal at this time. Please use one of the mail options below and be sure to remember to send a copy of your dealer license with the renewal. The renewals that have been received have been processed with the exception of approximately 100 that were incomplete. We are actively reaching out to these customers to request the required documentation. As of yesterday afternoon, 2,559 or the of the total 3,467 dealer registrations have been renewed. Questions may be directed to the Section 5 department at (857) 368-8030.

Regular Mail:

Registry of Motor Vehicles
Attn: Section 5
P.O. Box 55897
Boston, MA 02021

Overnight Mail:

Registry of Motor Vehicles
Attn: Section 5
25 Newport Avenue Extension, 4th Floor
Quincy, MA 02171

Reminder - Emergency Rules for Inspection Stickers

Last Friday the RMV issued emergency rules regarding the inspection sticker requirements for non-commercial vehicles, especially those vehicles which expiration dates in March and April, which you should have received via email.

In an effort to help dealerships and their customers maintain proper social distancing, as of March 20, the annual motor vehicle safety and emissions inspection expiration dates are being extended as follows:

- All non-commercial vehicle inspection stickers that expire on March 31, 2020 (designated by a number 3 on the inspection sticker) must be inspected by May 31, 2020.
- All non-commercial vehicle inspection stickers that expire on April 30, 2020 (designated by a number 4 on the inspection sticker) must be inspected by June 30, 2020.



- Non-commercial vehicles that are issued a failed inspection sticker (indicated by a sticker with a red or black letter 'R') that is due to expire in the month of March 2020 must be re-inspected by May 31, 2020, and non-commercial vehicles issued a failed inspection sticker due to expire in the month of April 2020 must be re-inspected by June 30, 2020. Additionally, the one free re-test for these vehicles is also extended to May 31 or June 30 provided the re-test is performed at the same inspection station that performed the initial inspection.
 - Regardless of the date of inspection, vehicles issued a failed inspection sticker due to a safety defect (indicated by a sticker with a red letter 'R') shall not be operated until appropriate repairs have been completed.
- All motorcycle inspection stickers originally set to expire on May 31 must be inspected by June 30.

The RMV is also extending the time during which newly registered vehicles must be inspected, which is typically within 7 days of the date of registration.

- Any newly-registered non-commercial vehicle purchased between March 1, 2020, and March 31, 2020, must be inspected by May 31, 2020.
- Any newly-registered non-commercial vehicle purchased between April 1, 2020, and April 31, 2020, must be inspected by June 30, 2020.

In addition, during the declared emergency period, the RMV is waiving the requirement of 540 Code Mass. Regs. § 4.08(2), which requires that inspection stations must remain open and available for inspections for a minimum of six hours per day, five days per week. Inspection stations are excused from compliance with this provision during the length of the COVID-19 emergency.

Finally, inspector and station licensing expirations are not being extended at this time because current resources are able to meet the application demand. However, you are strongly encouraged to submit your application on-line in the event RMV headquarter staffing becomes too sparse to handle the paper application demand.

As this Coronavirus struggle plays out over the next several weeks, good luck and be safe. Should you require additional information, please do not hesitate to contact us. Your Association continues to stand ready to assist.

MSADA - YOUR DEALER ANSWER PLACE

If you have any questions regarding this bulletin, please contact Robert O'Koniewski, Esq., MSADA Executive Vice President, by e-mail at rokoniewski@msada.org, or Peter Brennan, Esq., MSADA staff attorney, by e-mail at pbrennan@msada.org, or either by phone at (617) 451-1051.