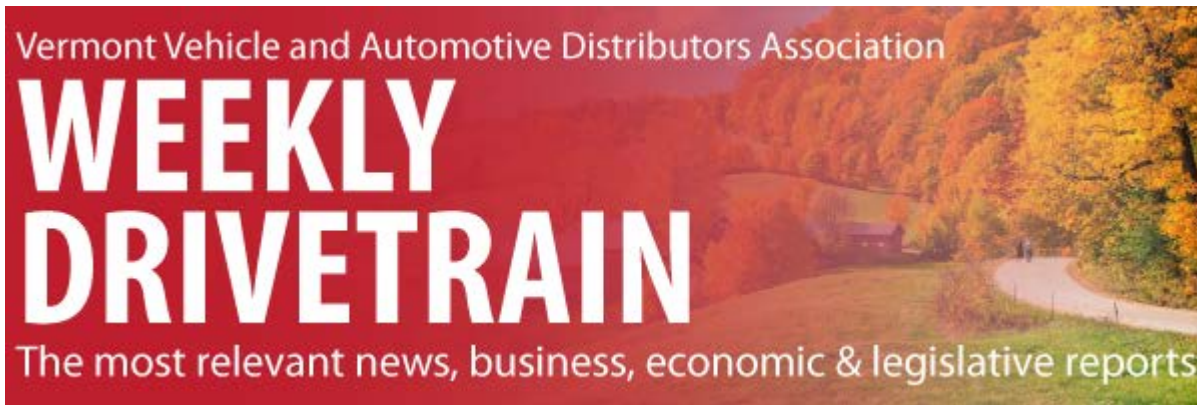


*[Helping You Drive Vermont's Economy](#)*



June 2021

Greetings <<First Name>>,

What Issue/Topic would you most like to see covered at VADA Annual Meeting? What topic or speaker is most likely to interest you at VADA's Annual Meeting in Montpelier on September 16? Email me [mmiller@vermontada.org](mailto:mmiller@vermontada.org)



### **Heads-Up on Fraudulent Proof of Income Documents**

Just a heads-up from one of our members that a customer recently provided him with a copy of his Social Security Beneficiary Amount notification as proof of income, which was the most convincing fraudulent document he's seen yet.

### **NADA Releases New Guide on Online Financing and eContracting**

Today's online tools make the sales and lease process more efficient for



dealers and consumers alike. [A Dealer Guide to Online Financing and eContracting](#) addresses an important part of that online process: electronic contracting, or eContracting. The guide discusses both in-dealership and remote eContracting, together with the corresponding best practices to help dealers manage compliance obligations. The guide also provides basic information on beginning the online

process and applying for credit; vehicle delivery with online sales; and post-sale assignment, distribution and funding. The guide was prepared for NADA by attorneys Daniel Doman and Joseph Karam of RouteOne LLC.

*Source: NADA*

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### **Our Daily Planet Interviews NADA President Mike Stanton re EV's**

Last month, the online environmental publication Our Daily Planet (ODP) sat down with NADA President Mike Stanton to discuss the important role that auto dealers will play in the EV transition. One of the main takeaways, as described by ODP, “is that auto dealers can

serve as an important resource for consumers to ask questions and have their concerns about EVs addressed with accurate information.” This is an important statement in part because Our Daily Planet is a leading environmental news platform covering the climate crisis, conservation, and more. In ODP’s own words, “car dealers will play a major part in encouraging this switch and selling a new era of cars to the public.” [You can watch the full interview here.](#)

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**REGULATORY REMINDERS**



## PPP Loans and Loan Forgiveness

On May 31, the Small Business Administration (SBA) stopped accepting lender applications for new first- and second-draw **Paycheck Protection Program (PPP) loans**. SBA has until June 30, 2021, to process those PPP Loan applications. To date, the SBA has approved some 11.8 million loans to the tune of \$800

billion. Loan data specific to franchised dealerships indicates that, as designed, the PPP successfully kept hundreds of thousands of dealership employees on payrolls during the height of the COVID-19 pandemic. For more information about PPP loans, see the [SBA PPP FAQ](#).

**Dealer PPP borrowers should now focus on [PPP loan forgiveness](#).** Upon receipt of a forgiveness application, a PPP lender will make an initial recommendation to SBA, which in turn will make a final forgiveness decision.

Of the 5.2 million PPP loans approved in 2020, 3.3 million have been forgiven and 145,000 are under review, leaving 1.7 million forgiveness applications to be filed with SBA. To date, SBA has yet to reject a loan forgiveness application in full. Note: a PPP borrower that fails to file for forgiveness within 10 months after the end of its covered period must begin making loan payments.

For more loan forgiveness information, please visit the [NADA Coronavirus Hub](#).

In addition to PPP loan forgiveness, dealers are encouraged to review the potential availability of [employee retention tax credits \(ERTCs\)](#) with their legal and financial advisors. An [NADA webinar](#) covers the ERTC in some detail.

Questions about these matters can be directed to [regulatoryaffairs@nada.org](mailto:regulatoryaffairs@nada.org).

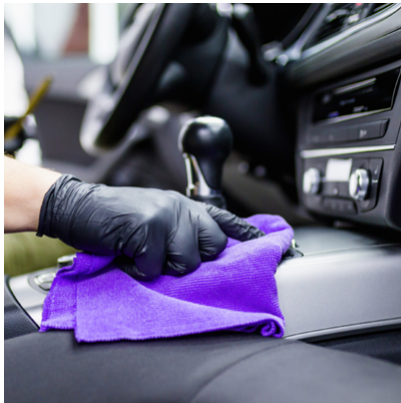


## FBI & CISA Issue Cybersecurity Advisory & Guidance on Darkside Ransomware

The Federal Bureau of Investigation (FBI) and the Cybersecurity and Infrastructure Security Agency (CISA) issued a joint **cybersecurity advisory** on the Darkside Ransomware, with technical details and practical guidance for

companies to take in order to avoid being victimized. Read more in the CISA Alert: [DarkSide Ransomware: Best Practices for Preventing Business Disruption from Ransomware Attacks.](#)

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## **OSHA Issues Guidance on COVID-19 Risks for Unvaccinated & At-Risk Workers Focus is on Identifying/Mitigating Risks**

The Occupational Health and Safety Administration [released revised guidance](#) to help identify COVID-19 exposure risks for unvaccinated or otherwise at-risk workers and to

help prevent exposure and infection.

Unless otherwise required by federal, state, or local law, most employers no longer need to put protections in place for fully vaccinated workers who are not otherwise at-risk from COVID-19 exposure. The revised guidance recommends:

1. Granting paid time off for employees to get vaccinated.
2. Instructing infected workers, unvaccinated workers with exposure to someone testing positive for COVID-19, and workers with COVID-19 symptoms to stay home from work.
3. Implementing physical distancing in communal work areas for unvaccinated and otherwise at-risk workers.
4. Providing unvaccinated and otherwise at-risk workers with face coverings.
5. Suggesting that unvaccinated customers, visitors or guests wear face coverings.
6. Continuing to perform routine cleaning and disinfection.
7. Implementing protections from retaliation.

The guidance covers these issues and other protective measures in detail. As with other OSHA guidance, these suggestions technically are not mandatory and create no new legal obligations. However, OSHA will consider an employer's good faith efforts to comply with its guidance in the context of enforcement.

Many states have OSHA-approved plans with health and safety standards and enforcement programs that are at least as effective as OSHA's but with



different or more stringent mandates. Most states and many local governments have instituted emergency COVID-19-related measures and have imposed stricter or different employment laws applicable to dealership operations. Look to state and metro dealer associations for specifics on these state and local requirements. For more information, see [NADA's Coronavirus Hub](#), including the revised [FAQs: Dealership Health and Safety Concerns During a Pandemic](#) or contact NADA Regulatory Affairs at [regulatoryaffairs@nada.org](mailto:regulatoryaffairs@nada.org).

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## Telephone Robocall Abuse Criminal Enforcement and Deterrence

REMINDER: on December 30, 2019, the TRACED (Telephone Robocall Abuse Criminal Enforcement and Deterrence) Act became law.

It contains a series of requirements, primarily on telecommunication service providers, but also several that apply more broadly, including a mandate that within one year, the Federal Communications Commission (FCC) must reevaluate certain exemptions it had previously granted regarding consent requirements for prerecorded calls under the Telephone Consumer Protection Act (TCPA).

As a result of this mandate, on December 30, 2020, the FCC released a [Report and Order](#) ("Order") that imposed certain **new restrictions on nonmarketing prerecorded calls to residential lines**. The effective date of these changes is delayed for six months (which will commence only after the Office of Management and Budget has approved the rule changes), so as a practical matter these changes are not likely to become effective for several more months. That said, dealers are encouraged to implement any necessary process changes now to accommodate the updated rules.

Previously, prerecorded calls to residential lines that were either noncommercial in nature or did not contain marketing (e.g., a vehicle was ready for pick up in the service department, appointment reminders, etc.) were exempt from TCPA consent requirements. In relevant part, the Order changes these exemptions by:

1. requiring consent to send more than three such prerecorded calls per 30-day period to a residential line, and

2. requiring callers to permit call recipients to opt out of such calls through an automated opt out mechanism.

The Order does not change existing exemptions for calls to wireless numbers, finding that these exemptions already satisfy the TRACED Act's requirements. Nevertheless, the order codifies these exemptions, which previously were set forth only in FCC declaratory rulings. As a practical matter, dealers should consider taking steps (if they if they have not already) to obtain consumer consent for such calls. The Order does not define what "consent" means in this context. Because these are nonmarketing calls by definition, it stands to reason that consent means "prior express consent," as that term has been construed by the FCC. And while written consent is not required, dealers should consider obtaining it, as it makes proof of such consent much more straightforward if needed. Dealers could obtain such consent on the R.O. or other document when a customer brings their vehicle in for service, for example.

Again, dealers should take steps now to determine whether they send such prerecorded messages, and if so, to put processes in place to ensure that either consent is provided, or that the 30-day call limit is not exceeded, and that such calls contain the required opt out mechanism. Questions can be directed to NADA Regulatory Affairs at [regulatoryaffairs@nada.org](mailto:regulatoryaffairs@nada.org).

*Please note that the above is not legal advice; dealers should consult with their attorney about compliance with all federal or state telemarketing duties or any other related legal or regulatory obligations.*



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