

Memorandum

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Date: March 24, 2020 (Updated: April 17, 2020)
To: Brian Maas and Anthony Bento, CNCDA
From: Aaron H. Jacoby
Lisa Singer
George Koumbis
Re: Online Vehicle Sales, Remote Selling and Home Delivery

The California New Car Dealers Association has requested a memo regarding online vehicle sales, home delivery and remote work for vehicle salespersons. Below is our executive summary followed by a brief discussion.

I. EXECUTIVE SUMMARY

While subject to California's current Stay at Home orders, dealerships can sell vehicles online, with or without the assistance of vehicle salespersons who work from home, and make home deliveries to consumers. Dealerships must comply with the following requirements:

- All deal terms must be agreed upon prior to delivery; there are to be no negotiations at the consumer's home
- Any licensed salesperson engaged in selling must have their sales license on display at the dealership
- Although most forms can be signed electronically, dealerships must obtain original (ink) signatures on DMV forms (Report of Sale and Reg 262)
- Customers entering into installment sale contracts must have an opportunity to review the contract, in a form they can keep, prior to execution
- Red-flags procedures must be followed, including the requirement to confirm each customer's identity prior to or at delivery

- CDC, state, and local rules must be observed, including social distancing, use of gloves, hand-sanitizers, etc. throughout the delivery process

II DISCUSSION

A. Statewide and Local Stay at Home Orders

California Statewide Order. On March 19, Governor Newsom issued a statewide “[Stay at Home](#)” order. This Order adopts the federal CISA (Cybersecurity and Infrastructure Security Agency) rules allowing only essential critical infrastructure sectors to remain open. The State Public Health Officer’s updated March 28, 2020 list of “[Essential Critical Infrastructure Workers](#)” specifically provides that auto repairs and maintenance facilities are essential. In addition, the definition of “Essential Workforce” includes:

- **Employees supporting or enabling transportation functions**, including truck drivers, , Department of Motor Vehicle (DMV) employees, towing/recovery services, roadside assistance workers, intermodal transportation personnel, and workers who maintain and inspect infrastructure (including those that require cross-jurisdiction travel).
- **Employees supporting personal and commercial transportation services – including taxis, delivery services**, vehicle rental services, bicycle maintenance and car-sharing services, and transportation network providers.
- Postal, parcel, courier, last-mile delivery, and **shipping and related workers, to include private companies**.
- **Workers critical to rental and leasing of vehicles** and equipment that facilitate continuity of operations **for essential workforces and other essential travel**.

Unless or until further state or federal rules provide otherwise, the above definitions are likely sufficient to permit online sales and home deliveries of vehicles, subject to limitations imposed by local county or city orders.

County and City Orders

Many California counties and cities have issued stay-at-home orders similar to the California statewide Order, but more restrictive. Some orders are silent regarding online vehicle sales with remote deliveries, while others specifically allow for them, such as:

- Bay Area Orders (e.g. see [Alameda County](#), March 31, 2020 – page 8, paragraph 13(f)(vii))
- [Los Angeles County](#), April 10, 2020 – page 5, paragraph 13(e)

Local orders may also impose additional health and safety requirements beyond CDC and State Guidance. These requirements are addressed below in the section regarding Health and Safety Requirements and Recommendations.

Not only do these local orders vary widely, but they are being amended or replaced so frequently that California dealers should look for local updates daily. Most of California's 58 counties and many major cities have enacted local orders, which often include rules that become binding within one to three days after the order is issued. But local rules are sometimes effectively immediately.

The delivery process should be analogous to the receipt of other delivered goods, with the exception of verifying identity and obtaining a few signatures. That means, the **delivery does not include:**

- Test drives. Without test drives, the “No cooling off rule” becomes more critical than usual. If dealerships intend to impose it on home deliveries, the dealership's website and communications with consumers should highlight this rule. Also, in the case of used cars sold for under \$40,000, more consumers may be interested in purchasing a Used Vehicle Contract Cancellation Option Agreement.
- Face-to-face attempts to sell additional products. There is to be no “up-selling” at the consumer's home; this is a delivery, not a sales call.
- In-person explanation of vehicle features. The traditional delivery process, where a delivery specialist explains how to use the features of the vehicle, will have to be done remotely, perhaps through video conferencing, an online video, or by phone.

In sum, in order for the delivery to be permissible under applicable Stay at Home Orders (unless remote delivery is specifically prohibited by a county or city order), it should be similar to the delivery of all the other products we receive at our homes.

B. DMV/Regulatory Compliance

Online Sales. The Vehicle Code does not prohibit online sales of inventory from a dealership's licensed, established place of business. Although the Vehicle Code requires that sales must be conducted through a licensed location [[Vehicle Code § 11714\(b\)](#)], there is no requirement that the salesperson or the consumer be physically present at the licensed location throughout the sales process. There is no published decision or administrative action that prohibits licensed salespeople from using technology to communicate with customers, whether by texts, emails, chats or phone calls, from an offsite location. So long as a licensed dealer has an established place of business where the licenses of all salespeople are displayed [[Vehicle Code § 11709\(a\)](#)], and the dealership's forms and processes are used to perform the sale, a licensed salesperson's use of technology from an offsite location should not violate the Vehicle Code. However, aside

from this offsite use of technology, a salesperson must not engage in “selling” at a physical location other than the dealer’s established place of business (excluding temporary licensed locations, such as tent sales). In other words, Vehicle Code Section 11714(b) may prohibit a salesperson from engaging in face-to-face sales at another physical location besides the dealership, but it does not prohibit “selling” through texts, emails, chats or phone calls, from an offsite location. Thus, all deal terms must be agreed in advance, and no further “selling” may occur at a customer’s home during the delivery process. By ensuring that no negotiations occur at a consumer’s home, dealers will also avoid residential solicitation laws (*see* [16 CFR § 429.0](#), allowing a 3-day rescission period, among other requirements).

E-contracting vs. Wet/Ink Signatures. This memo will not address the details of e-contracting or compliance with the federal E-SIGN act, but will touch on a few important issues. They are as follows:

- California law does not permit electronic disclosures to consumers for vehicle retail installment sales and leases, while the federal E-Sign Act does. Although California permits e-contracts for most agreements, [Civil Code § 1633.3\(c\)](#) specifically excludes vehicle retail installment sale contracts and vehicle lease agreements from California’s Uniform Electronic Transactions Act. Generally, when there is a conflict between state law and federal law, federal law takes precedence over state law. This is why more and more lenders have switched to e-contracting. However, no California court has issued a ruling regarding this conflict between state and federal law. Although we are aware of some consumer attorneys alleging that a vehicle installment sale contract or lease agreement that was signed electronically is invalid under California law, we are not aware of any such claim being pursued through trial or arbitration. Such claims are generally quickly dismissed when challenged by defense counsel.
- Regulation Z requires creditors, including dealerships, to give the Regulation Z disclosures to customers (APR, finance charge, total of payments, etc.) in writing, in a form the customer may keep, before consummation of the transaction [[12 CFR § 226.17](#)]. If the dealership will be presenting a paper copy of the Retail Installment Sale Contract to the customer at the time of delivery, and an electronic copy has not previously been provided, the customer must be given an opportunity to review the document prior to signing it.
- Regardless of whether or not a dealership engages in e-contracting or completes hard-copy sale/lease documents, DMV forms such as REG 262 and Reports of Sale must be signed with wet (ink) signatures. *See* Vehicle Industry Registration Procedures Manual §§ [5.075](#), [6.025](#), and [8.010](#).

Home Deliveries. The Vehicle Code does not prohibit offsite deliveries. Although the Vehicle Code does not specifically address offsite deliveries at all, the DMV acknowledges that dealers do in fact make remote deliveries. *See* Vehicle Industry Registration Procedures Manual, [Section 8.055](#) (“Dealers may use dealer plates to deliver the vehicle if the sale is consummated after delivery of the vehicle.”). Similarly, dealers with an autobroker’s endorsement are permitted to deliver vehicles to an offsite location. *See* [Vehicle Code § 11735\(d\)](#). For dealerships engaging in home deliveries, here are a few issues to consider.

- Temporary License Plates. As with any delivery, if the vehicle does not already have plates, temporary license plates must be affixed to the vehicle. *See* DMV’s webpage: [Temporary License Plates and Electronic Report of Sale](#). Unless the delivery vehicle has a printer, the dealership will need to enter the Report of Sale information and print the Temporary License Plates prior to delivery.
- Contract Signing and Retention. All contracts should be signed by the dealership in advance of the delivery, so the deal will be fully consummated when the customer signs the documents and takes the keys. After the customer signs the required documents, all signed documents must be returned to the dealership. The DMV Report of Sale form is the property of the DMV and “may be taken up at any time for inspection” by the DMV. *See* [Vehicle Code 11714\(e\)](#). Accordingly, the delivery driver must promptly return the Report of Sale (along with other signed documents) to the dealership following the delivery.
- Odometer Disclosures. The odometer sections of the sales and DMV forms must be accurate. Pursuant to [Vehicle Code § 5901\(d\)](#), a sale is not completed and consummated until the vehicle is delivered. Therefore, the proper odometer reading would be the reading at the time of delivery, after driving the vehicle to the customer's home. There are no issues if the vehicle will be delivered by a flat-bed delivery truck. All odometer readings can be entered into contracts and DMV forms prior to loading the vehicle on the delivery truck. However, complications arise if the vehicle will be driven to the customer’s home. In this situation, some dealerships determine the added mileage based on the distance from the dealership to the customer’s home and adjust the odometer information accordingly. This is probably a low-risk practice, if the mileage reading is accurate.
- Red flags/identification. The delivery driver must verify the customer’s identification, in person, to avoid potential identity theft. *See* [16 Code of Federal Regulations § 681.\(b\)\(9\)](#).

C. Step-By-Step Guidance on Online Sales and Remote Deliveries

Sales Negotiations. Dealerships can either offer online sales, without the assistance of a salesperson, or continue to employ salespeople to sell/lease vehicles. If salespeople are involved, the process of helping customers select a vehicle and negotiating or explaining sales, lease, and financing terms should be conducted by employees working from home. Remote sales staff should:

- Communicate with potential leads via email, video conferencing, phone calls, or messaging systems using software owned and controlled by the dealership.
 - DMS or CMS-integrated messaging applications that store data only on dealership servers and provide sales employees with cloud-based, revocable access are ideal.
 - There are systems available that allow salespeople to make and receive calls from a personal cell phone when they are logged into the application.
 - Confidential information, such as an image of a driver's license or insurance card, should be uploaded directly to the dealership's system, through a secure method. Salespeople should be prohibited from requesting that personal information be texted to the salesperson's cell phone or sent by email. Texts and emails from salespeople should include a link to the dealership's secure upload application. For example, the salesperson's text or email could provide: "Please do not send personal information via text or email. To securely send personal information, **click here** [link]."

Credit Applications, Lender, and Finance Department Approval. This is another area of operations that should be conducted remotely, if it can be done in a secure manner. Best practices include:

- Updating the dealership's online systems to allow customers to securely submit credit applications that are encrypted, stored securely, and accessible only to office staff with a bona fide need to access them.
 - Credit applications should never be circulated via personal cell phones or email accounts.
- Managers should be permitted to review and approve deals remotely, to the extent adequate data safeguards are available.
- In the event sufficient electronic safeguards cannot be provided in remote work environments, minimal staff will need to handle credit and lending issues on premises and should be physically isolated from other dealership employees when onsite work is necessary.

Credit Risk Issues. The need for dealers to proceed with caution regarding spot deliveries is greater now more than ever. Spot delivery [delivery of vehicles to customers prior to obtaining

final lender approval] is still legal in California. However, given significant changes in consumers' economic and employment outlook, potential risks include:

- Difficulty of Repossession. Repossession agencies cannot enter the private property of a fenced or gated home, garage, or driveway without the owner or renter's consent. Since consumers are staying home, repossession may be significantly more difficult.
 - Additionally, obtaining a court order for replevin, requiring the customer to return a vehicle that cannot be repossessed without breaching the peace, may also be more difficult as courts offer fewer hearings and have been extending non-emergency hearing dates.
- Public Relations Issues. The only opportunity to repossess a vehicle may be while it is parked at a grocery store, pharmacy, or other essential business that the consumer needs to access. Repossession under these circumstances, during a national emergency, could create a PR disaster.
- Higher Risk of Default. Even customers with good credit may suddenly be laid off or may suffer major reductions in their compensation. By waiting for final lender approval prior to delivery, there may be fewer transactions to unwind and fewer vehicles to repossess.
- Ten-Day Letters and Cancellation Process. The usual rules regarding the Seller's Right to Cancel still apply. If the dealership is unable to assign the contract to a lender/leasing company, the ten-day notice must be provided, ideally in a manner that can prove timely compliance, such as mailing a certified letter.
 - Providing such a letter requires a trip to the post office, and exposure to other people.
 - Also, even if the ten-day notice is sent on time, and the customer is cooperative, the dealership will need to develop protocols for unwinding the transaction in a safe manner.

DMV Forms and Temporary Plates. DMV forms that must be signed in ink, such as REG 262 and the Report of Sale, and Temporary License Plates that must be printed on DMV-approved paper, will need to be handled at the dealership (unless a delivery driver is printing plates from a delivery vehicle). A finance manager that would ordinarily sign registration paperwork should handle these tasks while physically isolated from other employees and any service customers at the dealership. Temporary license plates should be secured to the vehicle and all contracts should be signed by the dealership in advance of the delivery, so the deal will be fully consummated when the customer signs.

Pre-Delivery Inspection and Preparation. PDI and vehicle preparation work will need to be handled at the dealership's service department. Service employees should take additional care in disinfecting and handling the interiors of recently-acquired vehicles. As a best practice (and

certainly if required by local order) service employees that come into contact with other employees or customers should wear face coverings when in contact with others.

Delivery to Customer. Since residential delivery involves obtaining customer signatures and red-flags tasks that were previously done on premises, dealers will need to take great care in ensuring that delivery staff are adequately trained to handle these responsibilities.

- Flatbed Delivery. As explained above, delivery via flatbed trucks avoids the issue of having to calculate how many miles to add in registration and sales paperwork, in order to make accurate odometer disclosures. In addition, a flat-bed delivery can be handled by one employee, avoiding the need for an additional employee with another vehicle for the return trip (inconsistent with social distancing guidelines).
- Deliver to the Customer's Address of Record. To minimize the risk of identity theft, deliveries should be made only to the residential address appearing in the customer's credit report.
- Identity Verification and Signatures. Delivery employees should review the customer's government-issued ID and verify that the correct customer is signing all paperwork in the employee's presence. Given that customers may be wearing masks at a six-foot distance during the pandemic, below are recommended best practices to avoid identity theft:
 - A protocol should be developed for the driver to see the customer, though at a required social distance of six feet or whatever distance is recommended at the time.
 - The protocol should provide a method for the physical exchange and review by the driver of the photo on the customer's unexpired identification.
 - The driver should compare the physical description on the identification to the customer's appearance.
 - Is information regarding the customer's height, eye color, and age accurate?
 - These details should be verifiable even if the customer chooses to wear a face covering during the delivery.
 - If a customer cannot or will not personally meet the delivery driver to present their ID, the driver should contact a designated manager regarding whether to proceed with the delivery.
 - For example, suppose when the driver arrives, Johnny opens the door. Johnny tells the driver that the vehicle is being purchased by Grandma, but she is in bed and does not want to come to the door. Johnny provides Grandma's ID and offers to bring the paperwork to Grandma in her bedroom and return the paperwork to the driver, after Grandma signs.
 - A protocol should be developed to ensure that Grandma is who she purports to be, as verified by her ID.

- A protocol should be developed to ensure that the signatures on the ID and the executed documents match.
- If the driver contacts the manager because the driver is unable to confirm the customer's ID, the manager may choose to call the customer to ask "out of wallet questions," i.e., take other steps to verify the customer's identity.
- There may be situations where identity cannot be verified, in which case, the manager should instruct the driver not to make the delivery.
- To avoid surprises, in advance of the delivery, the dealership may want to require a video conversation, so the customer's ID can be preliminarily checked remotely.
 - However, as a best practice, a virtual identity check should be provided in addition to an in-person identity check, not instead of an in-person check.
- RISC Review. Customers entering into installment sale contracts must have an opportunity to review the contract, in a form they can keep, prior to execution. If a paper copy of the Retail Installment Sale Contract will be signed by the customer at the time of delivery, and an electronic copy has not previously been provided, the customer must be allowed to review the contract prior to signing it. The driver must be prepared to patiently wait for the customer to review the contract.
- DMV Signatures. DMV forms that require wet signatures (including REG 262 and the Report of Sale) must be countersigned by the customer at the delivery point.
- Face Coverings and Gloves. Delivery employees should wear face coverings and disposable gloves whenever they come into contact with others, including while interacting with customers (especially if an applicable local order requires face coverings).
- Trade-Ins. When a customer trades in a vehicle, it must be valued prior to delivery of the new vehicle. Customers can be required to provide photos or videos and to complete a Trade-in Disclosure form. Delivery drivers should be trained on visual inspection of the trade vehicles.
 - If the trade vehicle does not appear to match the agreed-upon value in the contract or has unanticipated damage, the driver must not renegotiate the deal or attempt to rewrite any sales documents. The driver should return to the dealership without completing the deal and notify the sales manager of the issue.
 - If the deal is consummated and concealed defects or title issues are subsequently discovered, the dealership will have the same rights available as it would if the deal were completed at the dealership.
- Return. After each delivery, the driver must promptly return the Report of Sale and other signed documents to the dealership. The driver should disinfect the handles and steering wheel of the delivery vehicle and should wash their hands before coming into contact with anyone on site. If the customer traded in a vehicle, upon return to the dealership, the trade vehicle should be cleaned and sanitized and then test driven to confirm there are no hidden issues.

[Note – lenders may have different or additional requirements. Before proceeding with your online/remote delivery program, we recommend confirming the process with the lenders with which you ordinarily do business.]

D. Wage and Hour Concerns

Nonexempt employees who work from home are subject to all the same rest break, meal periods and timekeeping requirements as employees who work on the dealership's premises. Employees who are permitted to work remotely must be instructed to take their required breaks and meal periods, and to keep an accurate record of time worked each day.

Also, employees (both exempt and non-exempt) are entitled to reasonable reimbursement for work-related expenses. If employees will incur additional expenses due to working from home, dealers should provide additional reimbursement for these expenses.

E. Health and Safety Requirements and Recommendations

Dealerships should implement policies and practices that comply with the [CDC's Interim Guidance for Businesses and Employers](#) and any local orders and protocols concerning workplace safety relating to preventing the spread of, and exposure to, COVID-19. Numerous counties throughout California have issued Orders that include social distancing protocols. The protocols vary from county to county. All protocols that we have reviewed address cleaning and sanitization requirements as well as spacing requirements for employees and customers (at least 6 feet). Some protocols require employees to wear face coverings (such as a mask, scarf or bandana) and some require employers to conduct screenings/symptom checks before employees may enter the workplace. The protocols must be distributed to employees and posted at public entrances to the business. Click [here](#) for a chart that includes links to many of the Orders and protocols. The chart also includes information regarding requirements relating to face coverings and employee screenings.

Below are policies and practices that relate specifically to a vehicle delivery program:

- Sick Employees Should Stay Home.
 - Require employees who have symptoms (fever, cough, or breathing difficulty) to notify a supervisor and stay home.
 - Symptomatic employees should not return to work until [CDC isolation criteria](#) have been met.
 - Require non-symptomatic employees with a sick person in their household to notify their supervisor and follow [CDC recommended precautions](#).
 - Only healthy employees who do not have a fever or cold-like symptoms should be permitted to access business premises or make deliveries.

- Screening. Daily screening must be conducted if required by a county order and is optional for other businesses.
 - Any such screening should take place when employees, including delivery drivers, commence their work shifts.
 - Screening likely includes having the employee state, either verbally or in writing that they have not experienced symptoms of Covid-19, including fever, cough or shortness of breath.
 - Employers may also conduct temperature checks. According to the CDC, a fever of 100.4 degrees or higher is one of the symptoms of Covid-19 [See [CDC CARE Publication](#)]
- Hand Washing. Wash hands often with soap and water, for at least 20 seconds.
- Hand Sanitizer. When soap and water are not available, use a hand sanitizer that contains at least 60% alcohol. Delivery drivers should carry hand sanitizer or if using a flat-bed delivery truck, keep a bottle of sanitizer in the truck.
- Clean and Disinfect. Frequently used surfaces, including workstations, keyboards, and telephones used by on premises staff, the steering wheel and door handles of delivery vehicles, and doorknobs.
- Disposable Gloves. When checking a customer's identification, or exchanging documents with a customer, wear disposable latex gloves. Use a fresh pair of gloves for each delivery.
- Social Distancing. The disease is spread when an infected person coughs or sneezes. To the extent possible, stay at least 6 feet away from other employees and customers. Do not touch surfaces in homes with bare hands. Do not touch face, eyes, nose or mouth without washing hands in between touching a person or surface. When providing documents to a customer, set the documents down and step away. Allow the customer to review and sign the documents. Then, the customer should step away from the executed documents so the driver can collect the dealer's copies.
- Face Covering. As mentioned above, some counties require employees to wear face coverings while working. Even if face coverings are not required where your dealership is located, they may be required at the delivery location. Regardless, as a best practice, delivery drivers should wear a mask/face covering when making a vehicle delivery.

F. Training

All employees involved in the online sales and remote delivery program should be trained regarding the program. Dealers should consider developing a compliance checklist. Attached is a [sample checklist](#), that can be used as a starting point to create a checklist based on the dealership's actual practices.