



Proposed Regulation Agency Background Document

Agency name	Motor Vehicle Dealer Board
Virginia Administrative Code (VAC) citation	24 VAC22-40
Regulation title	Independent Motor Vehicle Dealer Dealer-Operator Recertification Regulations
Action title	Establish Regulations for Recertification for Independent (used) Motor Vehicle Dealers.
Date this document prepared	November 30, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The dealer-operator is the individual who is in charge of the day-to-day operations of a motor vehicle dealership. For most independent (used) dealers, this is the owner. These regulations would require independent dealer-operators to recertify every three years by either completing a course of study or passing an exam. The regulations also establish criteria for entities that provide continuing education courses.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

VA. Code Sections § 46.2-1506.1., Additional training and 46.2-1503.4., General powers and duties of Board. Section 46.2-1506.1 allows the Board to promulgate regulations for additional training or conditions for renewal.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

Federal and state laws and court decisions are in constant change. Recertification requirements for independent (used) car dealers will not only help used car dealers keep up with these changes, but also refresh their knowledge of “old” laws and regulations.

Educated dealers are less likely to have problems with consumers and regulators. In addition, education enhances the professionalism of the motor vehicle sales industry.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

The proposed regulations outline how often dealer-operators will need to recertify by either successfully completing a course or by successfully passing an exam. They provide an orderly schedule to transition existing and future independent dealer-operators into a three year recertification cycle. The proposed regulations allow for entities outside of state government to develop and offer continuing education courses with the approval of the Board.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

Beginning January 1, 2006, by statute, the dealer-operator of any new independent motor vehicle dealership is required to successfully complete a course of study before they will be allowed to take the independent dealer-operator qualification test at any DMV Customer Service Center (CSC). These regulations are the next logical step as they require dealer-operators to keep up with laws, regulations and guidelines through continuing education in either a formal class or self-study.

Federal and state laws and court decisions are in constant change. Continuing education for independent car dealers will not only help used car dealers keep up with these changes, but also refresh their knowledge of “old” laws and regulations.

Educated dealers are less likely to have problems with consumers and regulators. In addition, education enhances the professionalism of the motor vehicle sales industry.

We do anticipate that a small number of dealer-operators will object to being “forced” to take continuing education courses or passing an exam. The concept of recertification and continuing education is supported by the Virginia Independent Automobile Dealers Association (VIADA). Requiring continuing education is a trend that many other states are following.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

There are no federal regulations/requirements for recertification for dealers. However, at least nine other states require continuing education for independent motor vehicle dealers.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Proposed regulations do not impact localities.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking

information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so via the Regulatory Townhall website, www.townhall.virginia.gov, or by mail, email or fax to

Bruce Gould
2201 West Broad Street, Suite 104
Richmond, VA 23225
Telephone: 804-367-1100; FAX 804-367-1053
Bruce.gould@mvdv.virginia.gov

Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source, and (b) a delineation of one-time versus on-going expenditures.	Costs to implement and administer the courses will be absorbed by the agency through its Special Fund and from the recertification fee that dealer-operators would pay every three years.
Projected cost of the new regulations or changes to existing regulations on localities.	None
Description of the individuals, businesses or other entities likely to be affected by the new regulations or changes to existing regulations.	Independent (used) motor vehicle dealers. Entities that provide courses
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	About 3,000 independent motor vehicle dealers will be affected. Nearly all are small business. We anticipate that at least two vendors will offer courses.
All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and do include all costs. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses. Specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the	The proposed regulations set a \$250 maximum fee that vendors may charge to course participants in addition to a \$25 fee that will be paid to the agency. Participants that choose to complete an exam in lieu of a course will pay a \$50 fee. This is the same fee paid by initial applicants. It is anticipated that vendors will set a fee in the \$150- \$200 range. It is also anticipated that classes will be made available on-line and in Community Colleges, thereby minimizing travel costs. Keeping in mind

<p>proposed regulatory changes or new regulations.</p>	<p>that the proposed regulations will require recertification every three years, means that the average per year cost for each dealer would be under \$100 if they take a course and less than \$17 if they take the exam..</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>Educated dealers are less likely to have problems with consumers and regulators. In addition, education enhances the professionalism of the motor vehicle sales industry.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

The Board has determined that like so many other professions, continuing education and recertification are essential. The proposed regulations will allow courses to be offered in not only a classroom setting but also online and as a correspondence course. Dealer-operators will also have the option of studying on their own and then taking an exam in lieu of taking a course. It is anticipated that the exam will be administered at all DMV Customer Service Centers utilizing their automated testing machines. Currently, the initial exam is administered at DMV CSCs. The proposed regulations are the most viable alternatives for continuing education for independent motor vehicle dealer operators.

Regulatory flexibility analysis

Please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

These regulations provide maximum flexibility for independent dealers to complete recertification requirements as they allow for courses to be offered in a classroom setting as well as online and by mail. Independent dealers will also have the option of studying on their own and recertifying by taking an exam at a DMV CSC.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Kenny Loveless of Northside Auto Sales, Manassas	<ul style="list-style-type: none"> • Opposed to mandatory continuing education as the vast majority of dealers take advantage of voluntary education opportunities. • There are already too many rules and regulations. • DMV and Dealer Board personal [sic] should take continuing education course on Free Enterprise System. 	<ul style="list-style-type: none"> • Evidence does not support this contention. If majority take advantage of voluntary education opportunities; see no reason why mandatory will be a problem • Rules and regulations are designed to protect consumers and dealers. Many other professions require continuing education. • No comment.
Virginia Independent Dealers Association (VIADA)	<ul style="list-style-type: none"> • Supports continuing education 	<ul style="list-style-type: none"> • VIADA has been involved in writing the proposed regulations.
Gail Davis, Davis Auto Sales, Chester	<ul style="list-style-type: none"> • Support; believes continuing education should be offered in different formats. (Classroom, internet, etc. 	<ul style="list-style-type: none"> • Agree
Other than representatives of the dealer Board and VIADA, public meetings attracted fewer than 10 other individuals.	<ul style="list-style-type: none"> • All supported the concept of continuing education. 	<ul style="list-style-type: none"> • Input from individuals attending public meetings was used in developing the proposed regulations.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No Impact

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For new chapters, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
10 (Definitions)	Defines words and terms used in the regulations.	None	None
20 (General)	Dealer operators must retain copy of their recertification certificate for five years	None	None
30 (Recertification Schedule)	Provides for an orderly system to transition all dealer operators into a recertification schedule over a three year time period.	None	Dealer operators will be required to recertify by taking a course every three years
40 (Recertification requirement)	Outlines recertification requirement to include either taking a course or taking an exam	None	Give independent dealer-operators choices in becoming recertified.
50 (Course Approval)	Sets criteria for entities that propose to offer continuing education courses.	None	Ensure that course providers are offering quality courses.
60 (Course Provider Responsibilities)	Outlines what course providers must do administratively.	None	Ensures that records are preserved and students receive recognition for completing recertification.
70 (Fees)	Sets a modest recertification fee and maximum fee that providers may charge.	None	Help off-set administrative costs and to keep course fees at a reasonable rate.