



Final 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	July 6, 2010

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

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.

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 new 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.

No changes were made to the final regulations from the published, proposed regulations.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At its regular meeting on January 11, 2010, the Motor Vehicle Dealer Board was briefed by its executive director as to the remaining steps in adopting these regulations. The Board instructed the executive director to proceed to the “Final” Stage provided there were no significant public comments or changes to the proposed regulations. Being there were no significant public comments and no changes to the final regulations from the proposed, the executive director is proceeding to the Final Stage.

DPB completed its final review on 3/30/10 and recommended approval. The Secretary approved the final regulations on 3/15/10 and the Governor approved them on 7/6/10. As there have not been any changes since the proposed stage, additional review by the Office of the Attorney General was not necessary/required.

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 numbers, if applicable, and (2) promulgating entity, i.e., 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. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal 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 identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the “All changes made in this regulatory action” section.

The final 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 final regulations allow for entities outside of state government to develop and offer continuing education courses with the approval of the Board. No changes were made to the final regulations from the published, proposed regulations.

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 there are no disadvantages to the public or the Commonwealth, please 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.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

No changes were made to the final regulations from the published, proposed regulations.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
David Boling with the Virginia Independent Automobile Dealers Association	“Opt-out” exam must be not be to easy.	The Board will establish an advisory committee to review the “opt-out” exam. We are confident that the exam will adequately test the exam takers knowledge
David Boling with the Virginia Independent Automobile Dealers Association	Caution must be taken that the “opt-out” exam does not become available “on the street”.	Point well taken. Safeguards will be put in place to ensure that the opt-out test does not become available “on the street”.

Enter any other statement here

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

NOTE: No changes were made to the final regulations from the published, proposed regulations.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
N/A	10 (Definitions)	None	Defines words and terms used in the regulations.
N/A	20 (General)	None	Dealer operators must retain copy of their recertification certificate for five years
N/A	30 (Recertification Schedule)	None	Provides for an orderly system to transition all dealer operators into a recertification schedule over a three year time period.
N/A	40 (Recertification requirement)	None	Outlines recertification requirement to include either taking a course or taking an exam
N/A	50 (Course Approval)	None	Sets criteria for entities that propose to offer continuing education courses.
N/A	60 (Course Provider Responsibilities)	None	Outlines what course providers must do administratively.

N/A	70 (Fees)	None	Sets a modest recertification fee and maximum fee that providers may charge.
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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.

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