



Virginia

Regulatory  
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## Final Regulation Agency Background Document

<b>Agency name</b>	Motor Vehicle Dealer Board
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC22-30
<b>Regulation title</b>	Motor Vehicle Dealer Advertising Practices and Enforcement Regulations
<b>Action title</b>	Review in Conjunction with Regulatory Reform Initiative. Most of the changes are not substantive.
<b>Date this document prepared</b>	May 5, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.*

Definitions have been updated and unnecessary language has been deleted. Updates better fit today's advertising environment including the internet.

At the public hearing to review the proposed, amended regulations, it was determined that existing language concerning disclosure of processing fee could be interpreted differently from what was intended. While this has never been an issue, it was decided that it would be best to clarify this language at this time. For all practical purposes, the change made to the final regulation does not change what was included in the published, proposed regulation. See 24VAC22-30-30.D.2

### 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 or board taking the action, and (3) the title of the regulation.*

On March 10, 2014 a public hearing was held for the purpose of reviewing the published, proposed amendments to the Motor Vehicle Dealer Advertising Practices and Enforcement Regulations. Each proposed change was reviewed at the meeting and comments were solicited. Questions were answered and here was discussion on some existing language concerning disclosure of processing fee. Some at the hearing believed that this language could be interpreted differently for what was intended. While this has never been an issue, it was decided that it would be best to clarify this language at this time. For all practical purposes, the change made to the final regulation does not change what was included in the published, proposed regulation. See 24VAC22-30-30.D.2

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

**§ 46.2-1582. Enforcement; regulations.**

The [Motor Vehicle Dealer] Board may promulgate regulations reasonably necessary for enforcement of this article [Article 9; Motor Vehicle Dealer Advertising.] In addition to any other sanctions or remedies available to the Board under this chapter, the Board may assess a civil penalty not to exceed \$1,000 for any single violation of this article. Each day that a violation continues shall constitute a separate violation.

**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.*

These regulations have not had a comprehensive review for nearly 15 years. The advertising laws have not changed over this period of time however; the “advertising world” has changed much over this period of time.

The advertising laws and regulations are in place to protect consumers and to “level the playing field” between licensed motor vehicle dealers. Clear advertising that is not deceptive to consumers is essential as the purchase of a motor vehicle is one of the most important and expensive purchases that a consumer makes. Dealers need parameters to guide them in ensuring that advertisements are clear and not deceptive. The proposed amended regulations further these goals by updating the regulations.

**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.*

No substantive changes.

**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.*

Unnecessary regulations/provisions have been deleted.

**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.*

<b>Section number</b>	<b>Requirement at proposed stage</b>	<b>What has changed</b>	<b>Rationale for change</b>
24VAC22-30-30.D.2	If a dealer has a processing fee, the fee amount must be disclosed in not less than 8-point type face unless the largest typeface in the advertisement is 8-point or less. In that case, disclosure of the processing fee may not be less than the largest typeface within the advertisement	The existing language was modified slightly to eliminate any chance of miss-interpreting the current language.	There is no change in practice. The language was changed for the final regulations as some participating in the last public hearing believed that the current language was slightly ambiguous. In order to remove any ambiguity, the language in this section was changed slightly.

**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
<p>Andy Kaplan Dominion of Bedford</p>	<p>My suggestion is to end the exception for freight charges in new car advertising. Dealers are currently permitted to advertise a price that excludes factory freight charges if those freight charges are later disclosed in a manner similar to the disclosure requirements for the Processing Fee. Thus, the sale price excluding freight charges and other items can be in very big and bold print while the disclosure for the total of excluded charges are in much smaller type. Factory freight charges can be \$1,000 or more these days. Thus the amount hidden in the fine print is very substantial.</p> <p>This is very misleading to typical consumers and forces dealers to make difficult ethical decisions whether or not to match the tactic utilized by competing dealers.</p> <p>When combined with very greedy Processing Fees that some dealers are charging these days, the bold advertised price might be as much as \$2,000 less than the true transaction price. The dealer in our market who utilizes this loophole excludes approximately \$1400 in freight and processing fees from his bold advertised prices.</p> <p>The greed of the Processing fees reflects badly on our entire industry as do the hidden freight charges. I believe that the Processing fees should be capped as they have been in Maryland. However, Processing fees are optional but freight is mandatory. Thus I believe that dealing with the freight charges should be the first priority of your Department. Those charging greedy Processing fees can be more easily dealt with in the marketplace.</p>	<p>It appears that Mr. Kaplan is suggesting that the "freight charge" for new cars should be included in the advertised price. Further, dealers should not be allowed to have a disclaimer that states the advertised price does not include freight. This would require a change in Code of Virginia (§ 46.2-1581(8)).</p>

<p>Ann Gambardella, Virginia Automobile Dealers Association (VADA)</p>	<p>If a dealer has a processing fee, the fee amount must be disclosed in not less than 8-point type face unless the largest typeface in the advertisement is 8-point or less. In that case, disclosure of the processing fee may not be less than the largest typeface within the advertisement. As written Ms. Gambardella believed that the existing language could be interpreted to mean that the processing fee must be in not less than 8-point typeface even if the largest typeface in the advertisement was less than 8-point.</p>	<p>It was the consensus of those attending the final Public Hearing that Ms. Gambardella was correct and that was not the intent. The language has been modified for the final regulations so that there could not be any misinterpretation of the current and future intent of the existing language.</p>
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Enter any other statement here

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
24VAC22-30-10			No impact. Simple edits.
24VAC22-30-20			No impact. Simple edits and update of definitions.
24VAC22-30-30			No impact. Simple edits and delete provisions that duplicate that which is in the Advertising Laws.
24VAC22-30-30			In sub section D.2, the existing language was modified slightly to eliminate any chance of miss-interpreting the current language.
24VAC22-30-30		Sub section "P" requires that dealers retain a copy of all advertisements for a period of 60 days.	Retaining internet advertisements for 60 days is a burden. Experience has shown that consumers and Dealer Board Staff print internet advertisements that are questionable. For print advertisements, staff will either have a copy or the consumer will provide it. It is not likely that the Board staff or consumers will be able to make a "copy" of a questionable radio or television advertisement. Therefore the proposed regulations only require dealers to retain TV

			and radio advertisements.
24VAC22-30-40			Delete provisions that duplicate that which is covered in Virginia Law
24VAC22-30-50			Delete this entire regulation as it duplicates that which is covered in Virginia Law.

Enter any other statement here