



Proposed Regulation Agency Background Document

Agency name	Motor Vehicle Dealer Board
Virginia Administrative Code (VAC) citation	24 VAC22-30
Regulation title	Motor Vehicle Dealer Advertising Practices and Enforcement Regulations
Action title	Review in conjunction with the Governor's Regulatory Reform Initiative.
Date this document prepared	July 23, 2013

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

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.

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

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.

Not Applicable

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] 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 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.

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 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.)

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

Unnecessary regulations/provisions have been deleted.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

Federal Truth in Lending and Truth in Leasing Regulations are adopted by reference.

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.

Not Applicable.

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 Motor Vehicle Dealer Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Motor Vehicle Dealer 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 Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Bruce Gould, Executive Director, 2201 West Broad Street, Suite 104, Richmond, Virginia, 23220; email: **bruce.gould@mvdv.virginia.gov**; Fax: 804-367-1053. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the Virginia Register of Regulations and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). 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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal.	Licensed Motor Vehicle Dealers who advertise may be affected. There will be no significant, additional economic impact. There will be some savings caused by the proposed change in retention requirements.
Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected	There are approximately 3,500 new and used car dealers in the Commonwealth. We believe that nearly all of these dealers meet the criteria to be considered a "small business". Any dealer who advertises may be impacted. Impact will not be significant.
Benefits expected as a result of this regulatory proposal.	Regulations will be more concise and clarify that internet advertising is treated just like any other advertising.
Projected cost to the state to implement and enforce this regulatory proposal.	No Cost beyond those related to promulgating the amended regulations.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	No cost whatsoever.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	No additional costs.

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.

There are no viable alternatives. If there were no Advertising Regulations to enhance the understanding of the Advertising Laws, both dealers and consumers would be negatively impacted.

Regulatory flexibility analysis

Pursuant to §2.2-4007.1B of the Code of Virginia, 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.

The Advertising Regulations fill in the “holes” around the advertising laws. The regulations do not place any burden on dealers. Rather, rather they provide clarification as to what is and is not acceptable in advertising. The regulations provide a means to ensure that all dealers advertise within the same parameters and that consumers will not be deceived by advertisements. Regulations are the only alternative available to accomplish these goals.

Public comment

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

Commenter	Comment	Agency response
John Summer JTZ Enterprise	<ol style="list-style-type: none"> 1. The regulation regarding bird dogging is outdated. 2. Agree that dealers should disclose processing fees; however most internet advertising sites fail to do so. 3. Scraping data is very popular. Even with the best intentions, most scrapers are putting some dealers in violation of advertising laws even though they had no idea it was happening 	<ol style="list-style-type: none"> 1. There is no anti bird dogging regulations. The Dealer Laws prohibit dealers from compensating anyone in connection with the sale of a motor vehicle unless that person is licensed. 2. We have been and continue to work with dealers and advertisers and to monitor advertisements in order to fix this problem. 3. We continue to work with dealers and advertisers to address this situation.
Discussion at Advisory Committee Meeting	It is difficult and expensive for dealers to retain an image/copy of all internet advertisements for 60 days	We will attempt to address this burden in the course of this regulatory review. [Which we did.]

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.

For many families, a motor vehicle is the most expense or close to the most expensive purchase they will make. Therefore it is essential that dealer advertising is honest, fair, clear and not deceptive or misleading. Making a “bad” vehicle purchase based on bad advertising can be devastating to a family’s economic well being.

Detail of changes

Please list 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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		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.