



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **24 VAC 22-40 Independent Motor Vehicle Dealer Operator Recertification Regulations Motor Vehicle Dealer Board**

**Town Hall Action/Stage: 6130 / 9851**

January 23, 2023

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB’s best estimate of these economic impacts.<sup>1</sup>

#### **Summary of the Proposed Amendments to Regulation**

In response to 2022 legislation, the Motor Vehicle Dealer Board (Board) proposes to repeal 24 VAC 22-40 *Independent Motor Vehicle Dealer Operator Recertification Regulations* (regulation). An “Independent motor vehicle dealer” or an “independent dealer” is defined in the Code of Virginia (Code) § 46.2-1583 as “a dealer in used motor vehicles who is not also licensed as a franchise motor vehicle dealer.”<sup>2</sup>

#### **Background**

This regulation, which provides the recertification requirements for independent dealer-operators (IDOs), was established on September 2, 2010, and has never been amended. The minimum qualifications for an initial IDO certificate are found in § 46.2-1511,<sup>3</sup> which also exempts the initial certification process from the Administrative Process Act. More recently,

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://law.lis.virginia.gov/vacode/title46.2/chapter15/section46.2-1583/>

<sup>3</sup> See <https://law.lis.virginia.gov/vacode/title46.2/chapter15/section46.2-1511/>

Chapter 574 of the 2022 Acts of Assembly codified the requirements for IDO recertification as § 46.2-1583 through § 46.2-1589.<sup>4</sup>

### **Estimated Benefits and Costs**

Following enactment of the 2022 legislation, the Code of Virginia now addresses all the requirements that are contained in the regulation. However, some of the requirements in the Code differ from those in the regulation. For example, in the Code IDO certificates of qualification are valid for 24 months, while in the regulation they are valid for 36 months. Also, some fees are higher in the Code than in the regulation.<sup>5</sup> Whenever there is conflict between the Code and regulation, the Code prevails. Thus, repealing the regulation would be beneficial in that it eliminates the possibility the public would be misled concerning the actual legal requirements in effect.

### **Businesses and Other Entities Affected**

According to the Board, there are approximately 3,798 certified IDOs in the Commonwealth.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>6</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. Since repealing the regulation would neither increase net cost nor reduce net revenue, adverse impact is not indicated.

### **Small Businesses<sup>7</sup> Affected:<sup>8</sup>**

The repeal of the regulation would not adversely affect small businesses.

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<sup>4</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?221+ful+CHAP0574>

<sup>5</sup> The recertification application fee is \$50 in the Code, and \$25 in the regulation. In the Code course providers may charge applicants a course fee of no more than \$300. In the regulation course providers may charge applicants a course fee of no more than \$250.

<sup>6</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>7</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “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.”

<sup>8</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject

**Localities<sup>9</sup> Affected<sup>10</sup>**

The repeal of the regulation would neither disproportionately affect any particular locality, nor affect costs for local governments.

**Projected Impact on Employment**

The repeal of the regulation would not affect employment.

**Effects on the Use and Value of Private Property**

The repeal of the regulation would not affect the use and value of private property or real estate development costs.

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to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>9</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>10</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.