



Virginia
Regulatory
Town Hall

Periodic Review and
Exempt Action or Exempt Agency Final Regulation
Agency Background Document

Agency Name:	Virginia Department of Transportation (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-450-10
Regulation Title:	Airport Access Funding
Action Title:	Amend APA-Exempt Regulation
Date:	March 7, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation which is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1.

Note that agency actions exempt pursuant to § 9-6.14:4.1 do not require filing with the Registrar a Notice of Intended Regulatory Action or at the proposed stage. The agency must still, however, comply with the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their final regulation in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation appears in VDOT's Department Policy Memoranda Manual. It outlines the policies and funding provisions VDOT will follow in providing funding under the Airport Access Fund Program, as administered by the Commonwealth Transportation Board (CTB). The Office of the Attorney General determined that the regulation is exempt from the APA under § 9-6.14:4.1B4 by correspondence dated March 1, 2001.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Under the provisions of 33.1-12, the Commonwealth Transportation Board (CTB) has general authority to let construction and maintenance contracts for highways, and to administer, distribute, and allocate transportation funds. However, the specific authority for the program covered by this regulation is § 33.1-221, which appropriates to the CTB funds derived from taxes on motor fuels, fees and charges on motor vehicle registrations, road taxes or any other state revenue allocated for highway purposes. These funds shall be used by the CTB for the purposes specified in the statute, after deducting the costs of administration before any of such funds are distributed and allocated for any road or street purposes.

The funds shall be expended by the CTB for constructing, reconstructing, maintaining or improving access roads within counties, cities and towns to industrial sites on which manufacturing, processing or other establishments will be built under firm contract or are already constructed and to licensed, public-use airports; in the event there is no such establishment or airport already constructed or for which the construction is under firm contract, a county, city, or town may guarantee to the CTB by bond or other acceptable device that such will occur.

The CTB may exercise its discretion in determining application procedures and other factors. For example, the regulation notes that airport access funding shall not be used for the acquisition of rights of way or adjustments of utilities.

However, the statute does mandate the following:

1. Towns which receive highway maintenance payments under § 33.1-41.1 shall be considered separately from the counties in which they are located when receiving allocations of funds for access roads.
2. No such access road shall be constructed or improved on a privately owned plant site.
3. If no establishment or airport acceptable to the CTB be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited.
4. In deciding whether or not to construct or improve any such access road, and in determining the nature of the road to be constructed, the CTB shall base its considerations on the cost thereof in relation to the volume and nature of the traffic to be generated as a result of developing the airport or the industrial establishment within the total industrial area. In any industrial park or airport, the total volume of traffic to be generated shall be taken into consideration in regard to the overall cost thereof.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

VDOT received no public comment in response to the Notice of Periodic Review published in *The Virginia Register*. No advisory group was formed to assist in the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected. Please state the reasons the agency determined the regulation be amended or terminated.

Goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
2. To ensure the program receives satisfactory audit reports.
3. Is the regulation written clearly and understandably?

Goal 1: § 33.1-221 states that the CTB shall administer the funds for the construction of access roads to various types of sites, which includes airports. The intent of the statute is to facilitate the construction of roads that will benefit the public welfare by enhancing the attractiveness of Virginia to businesses that may want to expand or locate facilities in the state. In addition, improved access to airports will improve the ability of people and goods to travel inside and outside the Commonwealth. Therefore, VDOT and the CTB believe that the regulation serves the public interest.

Goal 2: Projects may be randomly selected by VDOT's Internal Audit Division for review. Within the Secondary Roads Division, program fund allocations are monitored and reported monthly. Specific project spending is monitored periodically. Expenditures on projects administered by parties other than VDOT are approved by the Secondary Roads Division. All these actions help ensure that funds are spent as directed.

Goal 3: The regulation clearly lists the policy and funding limitations. VDOT believes that the lack of public comment received concerning the regulation indicates broad satisfaction with the format of the regulation, the manner in which it is implemented, its clarity and ease of comprehension, and its effectiveness. However, the Secondary Roads Division determined that

the discussion of funding limitations needed to be revised to bring it into compliance with current CTB policy.

This regulation has no effect on the family or family stability.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

There is no viable substitute for a general statement outlining the policy, funding criteria, and limitations associated with the airport access program, since the statute does not specify these topics. A regulation such as this ensures that decisions are made consistently and fairly by the CTB.

Statement of Final Agency Action

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

VDOT amended the regulation entitled *Airport Access Funding* by signature of the Deputy Commissioner on March 2, 2001. Under the rules established in *the Registrar's Form, Style, and Procedure Manual*, regulations exempt from the APA under the provisions of § 9-6.14:4.1 B become effective upon filing, so the amended regulation will become effective upon receipt by the Registrar. VDOT expects the regulation will be published in *The Virginia Register* in the spring of 2001.

Additional Information

Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.

If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.

Proposed text is attached. The Office of the Attorney General originally reviewed this regulation in 1993, and found that it was exempt from the APA under the following exemption: § 9-6.14:4.1 B (4), which exempts regulations dealing with grants of state or federal funds or property. The Office of the Attorney General reviewed the amended regulation and issued an opinion dated February 6, 2001, that VDOT has the authority to repeal the regulation, and that it comports with applicable state and federal law.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

This regulation has no effect on the family or family stability, nor does it affect any of the factors listed above.