



## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC30-220
<b>Regulation title</b>	Virginia Alternative Fuels Revolving Fund Regulations
<b>Action title</b>	Repeal of Regulation due to Deletion of Authorizing Statute from the Recodified Title 33.1 of the Code of Virginia
<b>Final agency action date</b>	October 23, 2014
<b>Document preparation date</b>	August 25, 2014

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

Section 33.1-223.3 *et seq.* (Article 16 of Chapter 1 of Title 33.1) of the *Code of Virginia* authorizes the creation of the Virginia Alternative Fuels Revolving Fund, specifying how the program is to be administered, including deposit requirements and distribution of funds. The Fund was established in 1992, in response to concerns over air quality and overdependence on gasoline and diesel fuel in the Commonwealth. Municipal and county governments, as well as other entities of the Commonwealth, were eligible to apply for grants or loans to convert public vehicles to alternative fuel use (generally compressed natural gas or electric type).

When originally enacted, Section 33.2-223.7 of the Code of Virginia authorized the Commonwealth Transportation Board to administer the Fund through the adoption of regulations, and the regulations were adopted in 1992. A 1994 amendment to the authorizing statutes replaced references to "Board" or "Department" with "Commissioner" apparently to eliminate split responsibilities for details of the Fund's administration. The 1997 Appropriation Act established funding for the program for the 1997-98 biennium,

but the General Assembly chose not to fund the program after FY 1998 (presumably due to a decrease in perceived need for the Fund). However, the statute was not repealed. The Alternative Fuels Program remains unfunded and inactive at this time, despite VDOT's attempts to secure funding from other sources.

This regulation, which is filed by description, was promulgated by specific authority granted to the Commonwealth Transportation Board (later granted to the Commissioner) pursuant to § 33.1-233.7(D), to adopt regulations to administer the Fund, and generally by § 33.1-12, which authorizes the CTB to make regulations and review and approve policies and transportation objectives of VDOT. Some discretion is permitted, within a defined framework of restrictions. For example, § 33.1-223.7 (A) sets forth the types of purposes for which applicants may use loans, and § 33.1-223.7 (B) allows the Commissioner to determine the terms and conditions of any loan from the Fund. However, according to VDOT records, no loans were made; funds were provided to recipients in the form of grants.

At the time the regulations were filed, the Office of the Attorney General (OAG) determined that the regulations are exempt from Article 2 of the APA under the exemption granted by § 9-6.14:4.1 B (4), now § 2.2-4002 B (4) (regulations relating to grants of state or federal funds or property).

VDOT had been retaining the regulations in the *Virginia Administrative Code* (VAC), since the underlying statute establishing the Fund remained part of the *Code of Virginia*, and there was a possibility that the General Assembly might choose to revive the Fund at a later date. However, with the recodification of Title 33.1 to Title 33.2, the Code Commission deleted the statutes relating to the Virginia Alternative Fuels Revolving Fund, removing the rationale for retaining the regulations in the VAC.

By letter dated October 22, 2014, the OAG stated that the Virginia Department of Transportation and the Commonwealth Transportation Board have the statutory authority to repeal these existing regulations under §§ 33.2-210 and 33.2-215 of the *Code of Virginia*, which superseded the previous citations from Title 33.1 of the *Code*, effective October 1, 2014. The OAG also concurred with VDOT's position that § 9-6.14:4.1 B (4) of the Code of Virginia (re-codified as § 2.2-4002 B (4)) remains valid regarding the Virginia Department of Transportation's and the Commonwealth Transportation Board's ability to repeal these 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.*

On May 14, 2014, the Commonwealth Transportation Board approved a resolution authorizing the Commissioner or his designees to take actions necessary to update to revise/update as appropriate and on behalf of the CTB, "all regulations . . ." approved by the CTB to reflect changes rendered necessary by recodification of Title 33.1 and other portions of the Code of Virginia pursuant to Chapter 805 of the 2014 Acts of Assembly. On July 7, 2014, the Commissioner of Highways issued a delegation of authority to VDOT District Administrators to revise/update the regulations under their jurisdiction to reflect any changes to the Code of Virginia pursuant to Chapter 805 of the 2014 Acts of Assembly.

On October 23, 2014, VDOT submitted a Regulatory Package to implement the CTB's and the Commissioner's delegation of authority concerning the repeal of the *Virginia Alternative Fuels Revolving Fund Regulations*, to become effective as of the date of filing/posting with the Registrar of Regulations and the Department of Planning and Budget.

**Family impact**

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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This action will have no effect on the institution of the family and family stability.