



## Virginia Regulatory Town Hall

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

<b>Agency Name:</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>VAC Chapter Number:</b>	24 VAC 30-550-10
<b>Regulation Title:</b>	Guidelines for the Logo Program
<b>Action Title:</b>	Amend Existing APA-Exempt Regulation
<b>Date:</b>	July 2, 2002

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.*

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These regulations establish minimum criteria, originally set by the Commonwealth Transportation Board (CTB) in 1972, by which gas, food lodging, and camping establishments may qualify for participation in VDOT's Travel Services Signing Program, commonly known as the Logo Program. The criteria apply to signing placed on the right of way of interstate highways, as well as controlled and limited access primary bypass routes.

The Office of the Attorney General has reviewed the program repeatedly since its inception, and has consistently held it to be exempt from the APA under § 9-6.14:4.1 B 11 (effective October 1, 2001, § 2.2-4002 B 11), which exempts actions relating to traffic signs, markers, or control devices.

As a result of a recommendation from the Commission on Transportation Policy to re-establish the Logo Program as a state enterprise and generate additional revenue for transportation projects, VDOT established a Task Force to evaluate the program. As a result, the Minimum Criteria were revised, as discussed below.

- Creation of a new category (Category II Food Businesses). The category includes the following features and benefits to program participants and the motoring public:
  - Opportunity for expanded opportunities for program participation;
  - Available at unsaturated locations, increasing access to motorists and additional economic opportunities for new enterprises;
  - Open to businesses on an annual basis, which promotes flexibility in participation;
  - Can serve any type food, increasing choices to motorists;
  - Open 12 consecutive hours, increasing availability of choices to motorists; and
  - Can be replaced by Category I businesses if necessary.
- Creation of a Full-Service Food category to permit operation of a pilot program in selected areas adjacent to interstates. Anticipated benefits include:
  - Opportunity for expanded opportunities for program participation under new category to supplement existing category;

This pilot will be re-evaluated in 2005 to determine its success in meeting the objectives of the overall Logo Program.

Finally, the requirement for program participants to have public telephones was eliminated. The proliferation of cell phones has resulted in telephone companies removing unprofitable public phones from many locations. Elimination of this requirement will reduce operating costs on establishments that may be unable to provide such amenities; it also updates program criteria to current business environment.

### 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.*

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State statute previously cited for this regulation is § 33.1-12(3), which permits the Commonwealth Transportation Board to make regulations concerning the use of the system of state highways. Since this statute does not establish minimum requirements for the authority, the CTB is free to use its discretion in establishing requirements for participation in the Logo Program.

### 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.*

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VDOT received no public comment resulting from the Notice of 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.*

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Goals:

1. To ensure that informational signs are posted alongside highways to communicate traveler information to motorists fairly and safely.
2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
3. Is the regulation written clearly and understandably?

Goal 1: The guidelines were originally created to reflect current trends of the participating businesses and service industries, to ensure the program is managed efficiently, and to ensure the needs of the traveling public are met. The Logo Program provides a means for businesses to make themselves known to potential customers (motorists), which promotes opportunities for economic diversification or expansion into new markets. It is both reasonable and appropriate for VDOT and the CTB to take an active role in ensuring that the safety and convenience of its

customers and stakeholders are enhanced. The regulation permits pertinent information to be communicated without distracting the motorists from other signage vital to safe travel.

Goal 2: Motorists benefit from becoming aware of the services program participants are able to provide, as well as the knowledge that certain minimum criteria must be observed to participate in the program. It is likely that motorist convenience and safety will be enhanced, since travelers will know which businesses offer varying types of food services or lodging, and such breaks will minimize fatigue. Since the program revisions provide additional revenue for VDOT to invest in refinements to the program, it need not be subsidized by VDOT, which frees funds that would otherwise be used to offset program costs. Therefore, VDOT and the CTB believe that the welfare of the public is being protected with minimal intrusion.

Goal 2: The regulation designates different categories for food services, camping, lodging, and gasoline services. Minimum criteria are set for each category, including requirements for location, amenities (rest rooms, types of services to be provided, etc.), duration of operation, and licenses or permits. VDOT and the CTB believe that the regulation is written clearly and understandably.

### 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 substitute for a regulation that sets forth the minimum criteria for program participants. VDOT must be able to ensure that the information conveyed on such signage does not distract motorists, or otherwise impair their safety. VDOT must also have the ability to establish consistent requirements for businesses to meet so that motorists can rely on certain amenities being available. This knowledge will make traveling more convenient, enhance safety, and provide economic opportunities for program participants.

### 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.*

The Commonwealth Transportation Board approved revisions to the *Guidelines for the Logo Program* on September 20, 2001. The Deputy Commissioner signed the regulatory package on July 2, 2002. 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 (11) (effective October 1, 2001, § 2.2-4002 B 11) become effective upon filing, so the amended regulation will become effective upon receipt by the Registrar.

## 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.*

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The text of the regulation is attached. The Office of the Attorney General re-reviewed this regulation in 1993, and found that it was exempt from the APA under the following exemption: § 2.2-4002 B 11. The Office of the Attorney General reviewed the amended regulation and issued an opinion dated February 1, 2002, that VDOT has the authority to amend the regulation, and that the exemption previously identified was reaffirmed.

## 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.*

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This regulation has no effect on the institution of the family and family stability, nor does it affect any of the factors outlined above. There is an unquantifiable benefit to motorists (which may include families) who will value the ability to take breaks from travel for meals, recreation, or other activities that the program information will provide.