



## 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 VAC 30-80
<b>Regulation title</b>	State Noise Abatement Policy
<b>Action title</b>	Repeal of Obsolete Regulation
<b>Final agency action date</b>	June 15, 2011
<b>Document preparation date</b>	June 27, 2011

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.*

The *State Noise Abatement Policy* (SNAP) (24VAC 30-80) sets forth the conditions under which noise abatement measures will be considered by VDOT for construction at areas impacted by highway noise. Requirements of the U. S. Code of Federal Regulations Part 772 (23 CFR 772) guide the analysis and abatement of highway traffic noise. The Commonwealth Transportation Board (CTB) initially approved this regulation in 1988, and amended it in 1996 pursuant to authority granted by § 33.1-12(3) and 33.1-49 of the *Code of Virginia*. The existing SNAP contained instructions on how VDOT implemented Title 23 Code of Federal Regulations, Part 772 (23 CFR 772), including items such as project categories covered by the existing regulation, noise impacts, abatement criteria, treatment of undeveloped land, etc.

The Federal Highway Administration (FHWA) published a proposal in the *Federal Register* on September 17, 2009, to make revisions to its Procedures for Abatement of Highway Traffic Noise and Construction Noise, and solicited input from state DOTs in further development of a final rule, which was published in the *Federal Register* on July 13, 2010. During this period, VDOT determined that the existing regulation was obsolete.

Instead of a detailed policy, implementation of the federal procedures within the Commonwealth are contained in VDOT's *Highway Traffic Noise Impact Analysis Guidance Manual (Manual)* which provides a general policy statement defining VDOT roles and authorities associated with following the federal procedures, along with step-by-step instructions on procedures, methodology, and documentation, concerning noise abatement analysis and remediation undertaken by VDOT.

For example, the *Manual* includes instructions on the following topics:

- selecting receptor sites
- determining "worst noise hours"
- determining highway traffic noise impacts and establishing abatement requirements,
- feasibility and reasonableness criteria for noise barriers,
- highway noise barrier design
- public involvement

The *Manual* also includes technical and policy references and worksheets. The FHWA has approved this *Manual* for use in conjunction with the new SNAP.

Because the new State Noise Abatement Policy and Guidance Manual provide guidance and information interpreting and implementing federal statute (23 USC 109), the Office of the Attorney General (OAG) has determined that the SNAP and Guidance Manual meet the statutory criteria of a "guidance document" set out in the Administrative Process Act (APA). As a result, the existing State Noise Abatement Policy (24 VAC 30-80) can be repealed as a regulation by the CTB under authority granted by § 33.1-12 (7) of the *Code of Virginia*. The OAG has determined that these actions are exempt from the APA under § 2.2-4002 B3 of the *Code of Virginia*, which exempts agency actions relating to the location, design, specifications or construction of public buildings or other facilities.

**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.*

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The Commonwealth Transportation Board repealed the existing *State Noise Abatement Policy* (24VAC 30-80) on June 15, 2011.

**Family impact**

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

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