



Exempt Action Final Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24 VAC 30-281
Regulation title	Revenue-Sharing Program Policy
Action title	Repeal of existing Regulation and Replacement with New Regulation Due to Changes in State Law
Final agency action date	April 17, 2008
Document preparation date	March 30, 2009

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, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

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.

This regulation establishes the policies and procedures the Virginia Department of Transportation (VDOT) will follow in providing funding under the Revenue-Sharing Program, as established by the *Code of Virginia* and administered by the Commonwealth Transportation Board (CTB). Chapter 608 (SB99) of the 2008 Acts of Assembly significantly modifies the Revenue-Sharing Program. Due to the extent of changes, it was deemed expedient to repeal the existing detailed regulation and replace it with a new regulation with less detail and supplemented by a revised Guidance Document.

In a resolution passed by the CTB addressing the legislative modification of the program, the Commissioner was granted authority to establish administrative procedures to assure compliance with program provisions. Pursuant to this authority, text appearing in 24 VAC 30-280 relating to definitions, eligible work, implementation, etc., is contained in a Guidance Document, similar to that which was used for the repealed regulation. For example, detailed descriptions of the types of work eligible for Revenue Sharing funds can be found in the *Guide to the Revenue Sharing Program*. These include:

- Deficits on Completed Construction, Reconstruction or Improvement Projects;

- Supplemental Funding for Projects Listed in the Adopted Six-Year Program Plan;
- Construction, Reconstruction or Improvement Projects not included in the Adopted Six-Year Plan;
- Improvements Necessary for the Acceptance of Specific Subdivision Streets Otherwise Eligible for Acceptance into the System for Maintenance; and
- New Hardsurfacing (Paving), and New Roadways.

The new regulation specifies the amount of matching funds available (up to \$1 million); the purposes for which the funds can be used (improvement, construction or reconstruction of highways within a locality); the statute under which revenue-sharing funds will be prioritized and allocated; requirements and conditions under which localities may request funds; conditions affecting how funds may be transferred administratively; time limitations concerning the use of revenue sharing funds; and conditions under which the CTB may grant additional allocations if funds have not been fully allocated.

Specific changes to the program provisions are discussed below:

- Source of Funds from Revenue Sharing Program: Under Chapter 608, revenue-sharing funds will come from “revenues made available by the General Assembly after January 1, 2008,” for state highway improvements, construction or reconstruction. Maintenance allocations are no longer eligible. Currently, revenue-sharing funds come from annual allocations for maintenance, improvements, construction or reconstruction.
- Use of Funds: Under Chapter 608, revenue-sharing funds cannot be used for maintenance, as currently allowed. These funds can be used for local highway construction, reconstruction and improvements.
- Project Location: Under Chapter 608, the project or projects can be on a highway system located between two or more localities in addition to a project or projects in another locality, within the requesting locality or to bring subdivision streets up to standards for acceptance into the primary or secondary system. Currently, the statute includes no instruction on the use of revenue-sharing funds for projects located between two or more localities.
- Project Listing: Under Chapter 608, requests for revenue-sharing funds must be accompanied by a prioritized listing of specific projects. Currently, no requirement exists for a listing, prioritized or otherwise, of projects.
- Prioritization Tiers for Allocations to Localities: Under Chapter 608, priority is given to requests when (from highest to lowest priority):
 - i) the locality (county, city, or town) commits to administering the project, either directly or by contract with another entity; this provision does not become effective until July 1, 2009 (affecting FY10 allocations), to allow localities additional time to become familiar with local administration requirements.
 - ii) the locality commits more local funding than the amount of the revenue-sharing request.
 - iii) the allocation will accelerate an existing project in the Six-Year Improvement Program (SYIP) or the locality’s capital plans.

Any remaining funds can be allocated to any other project (previously, the statute listed this provision as (iv) and uses the term *any other request*) that requires an equivalent matching allocation from the locality.

Currently, the list of tiers is as follows:

- i) when the locality (county, city, or town) commits to more than \$1 million from its general funds.
- ii) when the locality commits to administering the project. Previously, the statute did not state whether or not contracting the project to another entity shall be construed as administered by the locality. (This is the first tier in Chapter 608.)

- iii) The allocation will accelerate an existing project in the SYIP or the locality’s capital plans. (Same as in Chapter 608.)
 - iv) Any other request (Chapter 608 uses the term *any other project*) that has a matching allocation from the locality.
- VDOT Assistance: Under Chapter 608, VDOT may, at the request of the locality, provide the locality with engineering, right-of-way acquisition, and/or construction services for a project with VDOT forces. The locality shall provide payment to VDOT for any such services. There is no similar provision under the current statute.
 - Local Contribution from Proffers: Under Chapter 608, the current limit of up to one-half of any local government’s contribution may take the form of proffers accepted by the locality and deposited into the locality’s general fund is eliminated.
 - Duration of Allocation: Under Chapter 608, revenue-sharing projects must be started so that a portion of the funds have been spent within two subsequent fiscal years of allocation. Any revenue-sharing funds allocated for projects that have not been started after two subsequent fiscal years of allocation may be reallocated at the discretion of the CTB.
 - Funding Limits: Under Chapter 608, the CTB allocation must be between \$15 and \$50 million each year, subject to appropriation for revenue-sharing purposes. Currently, the statute sets the CTB’s maximum allocation at \$50 million each fiscal year, with no minimum.
 - Disposition of Unallocated Funds: Under Chapter 608, funds remaining three months prior to the end of the fiscal year may be allocated to those localities requesting the maximum allocation. Currently, funds remaining three months prior to the end of the fiscal year may be allocated to those localities requesting more than \$1 million. The additional allocation shall be at the discretion of the CTB.

The Office of the Attorney General has previously determined that 24 VAC 30-280 is exempt from the APA under § 2.2-4002 B 4. By letter dated March 24, 2009, statutory authority cited by the OAG to promulgate 24 VAC 30-281 and repeal 24 VAC 30-280 is §§ 33.1-23.05, and 33.1-72.1 of the Code of Virginia.

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 April 17, 2008, the Commonwealth Transportation Board approved the Revenue Sharing Program Policy (24 VAC 30-281), and repealed the previous policy set out in the Revenue Sharing Program (24 VAC 30-281). Upon the advice of the OAG, the effective date for these actions will be July 1, 2009.

Family impact

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

This regulation will not affect the institution of the family or family stability.