



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 30-260-10
Regulation Title:	Debarment of Bidders
Action Title:	Terminate
Date:	July 26, 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 establishes the policy, criteria, and procedures the Commonwealth Transportation Board uses in determining sanctions for contractors that behave in an unethical or unprofessional manner (e.g., committing a bidding crime; falsification of records; unsatisfactory performance, etc.). The Office of the Attorney General determined that this regulation is exempt from the APA under § 9-6.14:4.1 B (2).

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. Under the provisions of § 11-46.1 of the Code of Virginia, prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction. The statute directs that any debarment procedure must be specified in writing for state agencies and institutions by the agency or agencies that the Governor may designate.

The CTB has given the Commonwealth Transportation Commissioner authority at his sole discretion to debar a firm or individual or affiliate. The regulation addresses the procedures for debarment, appeal, and reinstatement; and the criteria used for these decisions; and outlines the role of the Commissioner and the CTB in making these decisions. However, these procedures are subject to review and approval by the Governor, so there is some constraint on the CTB's authority.

This is one of two policy statements concerning debarment; this version appears as DPM 2-10 in VDOT's Department Policy Memoranda Manual. The other version is filed under a separate VAC number (24 VAC 30-340-10), and is administered through the Construction Division.

This regulation does not exceed minimum requirements of the state mandate.

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 informal advisory group was formed.

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.

The specific and measurable goals are as follows:

1. To ensure VDOT's procurement of contractors is conducted efficiently and effectively;
2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
3. Is the regulation written clearly and understandably?

(These goals are the same as listed for the debarment policy filed under VAC 30-340-10 et seq.)

Response to Goal 1: The CTB and VDOT have a responsibility to ensure that procurement of goods and services is conducted with due attention to ethical and professional standards. The regulation is intended to establish the types of conduct the CTB and the Commissioner will take into consideration in making decisions about debarment.

Response to Goal 2: The CTB and VDOT also have a responsibility to protect the public's health, safety, and welfare. Criminal behavior or poor work by firms or individuals not only compromise the integrity of the procurement process; they may jeopardize public safety or lead to more costly investments in time and money to complete or repair the contracted work.

Response to Goal 3: The regulation defines pertinent terms, lists causes for debarment, and discusses the effect of debarment on other contracts. It details steps to be followed by the contractor, the Commissioner, and the CTB for pre- and post-debarment phases of the process. VDOT believes that the lack of public comment received concerning the regulation indicates general satisfaction with the format of the regulation and its clarity and ease of comprehension.

This regulation was originally created as a policy statement in 1991, when VDOT's Department Policy Memoranda Manual was totally re-written. It was derived from the debarment policy administered by the Construction Division. The Construction Division debarment policy was filed as a regulation under a separate VAC number, and is not being affected by this regulatory action. (Proposed revisions under review to VAC 30-340-10 include providing additional criteria whereby firms or individuals may be debarred; streamlining the regulation by removing unnecessary text, and using more inclusive language.) Because of the possibility of confusion over two separate policies addressing the same subject, as well as concerns over unnecessary duplication of effort, this policy statement is being terminated.

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.

As part of the Periodic Review Process, VDOT determined that it is unnecessary to have two separate regulations addressing the same subject. Since the initial filing in 1993, regulations are widely available through websites established by VDOT, The Registrar, the Department of Planning & Budget, and others. Therefore, in the interest of eliminating the possibility of confusion over two separate regulations addressing the same subject, as well as concerns over duplication of effort, VDOT is terminating this regulation. This action will leave 24 VAC 30-340-10 as the official regulation addressing debarment for VDOT.

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 terminated the regulation entitled *Debarment of Bidders* by signature of the Deputy Commissioner on July 24, 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 regulatory action will become effective upon receipt by the Registrar. VDOT expects the regulation will be published in *The Virginia Register* in August 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.

Since it is being repealed, no text is attached. The Office of the Attorney General (OAG) 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 (2), which exempts regulations dealing the award or denial of state contracts, including compliance. The OAG reviewed the amended regulation and issued an opinion dated July 18, 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 institution of the family and family stability, nor does it affect any of the factors outlined above.