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Regulatory
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Periodic Review / Retain Regulation Agency Background Document

Agency name	Virginia Department of Transportation/Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-220
Regulation title	Virginia Alternative Fuels Revolving Fund Regulations
Document preparation date	September 29, 2006

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 21 (2002) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

Section 33.1-223.3 *et seq.* (Article 16) 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). The General Assembly chose not to fund the program after FY 1998 (presumably due to a decrease in perceived need for the Fund), but retained the underlying statute. ***The Alternative Fuels Program, which had been administered by the Financial Planning Division of VDOT, continues unfunded and inactive at this time.***

This regulation is promulgated by the Commissioner of the Commonwealth Transportation Board pursuant to 33.1-233.7(D), authorizing the Commissioner to adopt regulations to administer the Fund, and § 33.1-12, authorizing the Commissioner to make rules and regulations covering the use of systems of state highways. The statutes allow some discretion to VDOT, 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; § 33.1-223.7 (B) allows the Commonwealth Transportation Commissioner to determine the terms and conditions of any loan from the Fund.

The regulation addresses some items not covered explicitly in the statute, but necessary to administer the Fund. For example, it stipulates that applications for entities such as school boards, planning districts, etc., must be accompanied by a formal resolution of the appropriate governing body. Furthermore, application requirements include information on the scope of the project; schedule of work; cost savings; assessment of environmental effects, etc. These are all measures to ensure that adequate information is provided to determine the most cost-effective or environmentally beneficial recipients, and ensure that proposed projects have the support of the municipality or governing body.

The Office of the Attorney General has determined that this regulation is exempt from the APA under the exemption granted by § 9-6.14:4.1 B (4), now § 2.2-4002 B (4).

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Section 33.1-223.3 *et seq.*, establishing the Virginia Alternative Fuels Revolving Fund directs that regulations be adopted to govern administration of the fund, so no alternatives were considered.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

VDOT received no public comment during the Notice of Periodic Review, so no response was required. Since the program has not been funded by the General Assembly in recent years, no critical issues or particular areas of concern were identified in the regulation. No advisory group was formed to assist in the periodic review.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 21, e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

The stated goals of the Virginia Alternative Fuels Revolving Fund include:

1. To encourage the use of alternative fuels to improve the air quality in Virginia.
2. To reduce dependence on imported fuels.
3. To reduce the costs of the purchase and operation of publicly owned vehicles in Virginia.
4. To improve the economy of Virginia.

These goals implicitly serve the overall goal of protecting the public's health, safety and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth. By facilitating access of municipalities and others to non-polluting energy sources, VDOT believes that these regulations are essential to protect the public's health, safety and welfare. This regulation is tailored to specific goals related to the use of alternative fuels.

Most distributions of fund moneys made pursuant to this regulation have been to areas in which compliance with the Clean Air Act and related laws and regulations were a concern, including the Northern Virginia, Richmond and the Tidewater Region. Other funds have been used for the purpose of funding research through Virginia Tech, into alternative fuels. To the extent that the Fund exists to help municipalities and others implement non-polluting technology, VDOT believes that this regulation has helped to meet the stated goals of the regulation.

VDOT believes that this regulation and the included forms are clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

VDOT recommends that this regulation be retained without change. The General Assembly chose not to fund the program addressed by this regulation after FY 1998. However, the statute (§ 33.1-223.3 et seq.) authorizing the program has not yet been repealed, and it is possible that, in the future, the General Assembly may choose to restore funding for alternative fuels. Therefore, VDOT believes that the most prudent course of action is to retain the regulation as written. Should it become necessary to amend the regulation in the future to accommodate restored funding, VDOT will make any changes at that time.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

This regulation has no direct impact on the family or family stability.