



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 30-330-10
Regulation Title:	Urban Division Manual, Chapter III
Action Title:	Amend Existing Regulation
Date:	January 18, 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 appears as Chapter III of the *Urban Division Manual*. It deals with the policies and procedures VDOT uses in administering the Urban Construction Program (including eligibility requirements and funding sources). The division uses the authority granted by the *Code of Virginia* to identify appropriate funding sources for the distribution of construction funds among projects in various municipalities. Along with Chapter II (which deals with the

Urban Maintenance Program, and is filed separately as 24 VAC 30-320-10 et seq.), the entire manual is intended to explain and interpret for municipalities and VDOT users the policies and procedures that have been developed to carry out the urban highway maintenance and construction programs established by Title 33.1 of the *Code of Virginia*. Other chapters of the *Urban Division Manual* not filed as part of this regulation address subjects such as organization of VDOT and the Urban Division, a Mission Statement for the division, and information on specialized items handled by other divisions, such as Industrial Access or Recreational Access Programs.

The Office of the Attorney General determined in 1993 that this chapter was subject to the VRA but exempt from the APA through the following exemption: § 9-6.14:4.1B4.

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.

The Commonwealth Transportation Board is charged by § 33.1-12 (11) to administer, distribute, and allocate funds in the TTF as provided by law. In fact, Title 33.1 of the *Code of Virginia* establishes many statutes concerning programs for transportation funding. For example, Article 1.1 (Allocation of Highway Funds) defines the term “maintenance,” and deals with the functions of the various funds established for transportation, such as the Transportation Trust Fund (TTF) and the Priority Transportation Fund (PTF). State statute allows the CTB and VDOT some latitude in decision-making, subject to statutory restrictions.

Specifically, § 33.1-23.1 directs the CTB to allocate funds for maintenance on all systems. The same statute also addresses how construction funds are allocated to the interstate, primary, urban, and secondary systems. The amounts of funds under this statute are not absolute. For instance, the General Assembly may permit the Governor to increase these amounts through the Appropriation Act.

§ 33.1-23.3 directs the CTB to allocate funds to urban highways, subject to restrictions set forth in the statute. For example, an apportionment cannot be made to a city or town that lacks a project or projects that the CTB has not approved. Furthermore, no apportionment to a city or town can exceed the total estimated cost of the project or projects for which funds are allocated.

The authority to allocate funds to specific projects is somewhat discretionary, given the role of the CTB in letting construction contracts for transportation as allowed for by § 33.1-12. However, cities and towns may submit resolutions requesting part of its annual apportionment be applied to a specific eligible project, and the CTB may approve this action, subject to statutory limitations. Furthermore, the Commonwealth Transportation Commissioner may set the terms and conditions for reimbursement to localities under § 33.1-23.3. In this sense, the entire regulation exceeds the minimum requirements of the underlying statutes that authorize the program.

Other statutes addressing the Urban Construction Program are:

§ 33.1-44 (matching funds; funding of urban system construction); § 33.1-89 (power to acquire lands);§ 33.1-214 (contributions by cities or towns toward road building, bridges);§ 33.1-46.1(highway aid to mass transit);§ 33.1-221 (funds for access roads to airports and industrial sites);§ 33.1-223 (fund for access roads and bikeways to public recreational areas and historical sites);§ 33.1-27 (extensions of arterial highways within cities and towns);§ 33.1-39 (bypasses through or around cities and incorporated towns).

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*. A review draft of the entire revised *Urban Division Manual* was circulated internally by the Urban Division. A copy was also forwarded to the Office of the Attorney General for 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.

The specific and measurable goals are as follows:

- To comply with state statute;
- To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth; and.
- Is the regulation written clearly and understandably?

VDOT believes that this regulation fulfills the goals listed above. The regulation is written to provide a general overview of the policies and procedures involved and provide guidance to eligible localities. VDOT believes that the absence of public comment during the notice period indicates the regulation is serving its intended purpose.

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 general statement outlining the criteria and procedures VDOT uses in administering various parts of the Urban Program, because eligible localities need this information to ensure that they receive the payments for which they are entitled, and the statute does not fully address the requirements. Since the chapter was originally filed as a regulation in 1993, a new category of written material called "guidance documents" was added to the *Code of Virginia* in 1997. As defined in § 9-6.14:4, a "guidance document" is

any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies.

It is possible that this regulation may be reclassified as a guidance document; however, this alternative is totally dependent on further review of the status of the regulation by the Office of the Attorney General (OAG). VDOT plans to re-confirm the filing status of this regulation.

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 Urban Division circulated a draft of the entire *Urban Manual* to affected divisions for comment in late 2000, and has been slow in receiving comments. In addition, the Commission on Transportation Policy recently completed a report with many recommendations that affect how projects are planned, selected for funding, and brought to completion. Some recommendations were implemented immediately. Others will need approval by the General Assembly and the Governor before they can be implemented. For example, substantial changes to the Six-Year Improvement Program (now known as the Virginia Transportation Development Plan) have already been implemented. The division anticipates completing its revisions during early 2001, depending on the nature and extent of statutory changes made during the 2001 General Assembly Session.

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.

The text of the regulation is not attached, as it is still in the revision stage. Forms have been made available to the public via a link on VDOT's external Website:

<http://www.extranet.vdot.state.va.us/forms/>

VDOT will re-confirm the filing status of the regulation, secure an opinion from the Office of the Attorney General that the content comports with applicable state law, and process the revisions as required by statute.

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. No other factors identified above are affected by the regulation.