



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Virginia Department of Transportation (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-300-10 et seq.
Regulation Title:	Guide to the Recreational Access Program
Action Title:	Review and Retain
Date:	March 5, 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 retain an existing regulation.

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 outlines the requirements of the Recreational Access Program as authorized by the *Code of Virginia*, and is intended to serve as a reference to local jurisdictions and VDOT in the preparation and disposition of applications for program funding. 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).

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, and to administer, distribute, and allocate transportation funds. However, the specific authority for this regulation is from § 33.1-223 of the Code of Virginia. The statute authorizes the Commonwealth Transportation Board (CTB) to set aside the sum of three million dollars initially from funds allocated to the primary system, secondary system, or urban system of state highways. This fund shall be expended by the CTB for the construction, reconstruction, maintenance or improvement of access roads and bikeways within counties, cities and towns, and is to be replenished at the end of each fiscal year, provided the balance in the fund plus the replenishment does not exceed the aforesaid three million dollars.

The statute also authorizes the CTB to make regulations to carry out the provisions of this section, with the concurrence of the Director of the Department of Conservation and Recreation. Therefore, there is some discretion afforded the CTB in determining application procedures, criteria relating to eligibility; design standards, etc.

However, the statute also mandates specific conditions that must be met. These include a directive for the CTB to construct, reconstruct, maintain or improve access roads and bikeways to public recreational areas and historical sites upon the following conditions:

1. When the Director of the Department of Conservation and Recreation has designated a public recreational area as such or an historic area as such and recommends to the Commonwealth Transportation Board that an access road or bikeway be provided or maintained to that area;
2. When the Commonwealth Transportation Board pursuant to the recommendation from the Director of the Department of Conservation and Recreation declares by resolution that the access road or bikeway be provided or maintained;
3. When the governing body of the county, city or town in which the access road or bikeway is to be provided or maintained passes a resolution requesting the road; and
4. When the governing body of the county, city or town in which the bikeway is to be provided or maintained adopts an ordinance pursuant to Article 8 (§ 15.1-486 et seq.) of Chapter 11 of Title 15.1.

In addition, no access road or bikeway shall be constructed, reconstructed, maintained or improved on privately owned property.

Finally, not more than \$400,000 of recreational access funds may be allocated for an access road to any facility operated by a state agency and not more than \$250,000 for an access road for a facility operated by a locality or an authority with an additional \$100,000 if supplemented on a dollar-for-dollar basis by the locality or authority from other than highway sources. Not more than \$75,000 of recreational access funds may be allocated to any specific bikeway operated by a

state agency and not more than \$60,000 to a bikeway operated by a locality or an authority with an additional \$15,000 if supplemented on a dollar-for-dollar basis by a locality or authority from other than highway sources.

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 formed for purposes of assisting in the periodic review.

VDOT received no public comment during the Notice of Periodic Review, so no response was prepared. No advisory group was formed to assist in the periodic 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. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

Goals:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
2. To ensure the program receives satisfactory audit reports.
3. Is the regulation written clearly and understandably?

Goal 1: § 33.1-223 states that the General Assembly declares it to be in the public interest that access roads and bikeways to public recreational areas and historical sites be provided by using funds obtained from motor fuel tax collections on motor fuel used for propelling boats and ships and funds contained in the highway portion of the Transportation Trust Fund. Furthermore, the statute authorizes the CTB, with the concurrence of the Director of the Department of Conservation and Recreation, to make regulations to carry out the statute. Therefore, VDOT and the CTB believe that the regulation serves the public interest.

Goal 2: Projects may be randomly selected by VDOT's Internal Audit Division for review. Within the Secondary Roads Division, program fund allocations are monitored and reported monthly. Specific project spending is monitored periodically. Expenditures on projects

administered by parties other than VDOT are approved by the Secondary Roads Division. All these actions help ensure that funds are spent as directed.

Goal 3: The regulation clearly lists factors to be considered for eligible projects and bikeways; funding limitations; application and approval processes; and sample resolutions for local governments to follow in requesting designations or funding under the provisions of the regulation. VDOT believes that the lack of public comment received concerning the regulation indicates broad satisfaction with the format of the regulation, the manner in which it is implemented, its clarity and ease of comprehension, and its effectiveness.

This regulation has no direct effect on the family or family stability. There may be an indirect effect on families through the facilitation of projects that enhance enjoyment of leisure time spent by families, but these effects cannot be accurately quantified.

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 viable substitute for a document that sets forth policies and procedures to carry out the provisions of the statute. If there were alternatives other than a regulation, the statute would not authorize the CTB to make regulations concerning administration of the program.

Recommendation

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.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

This regulation has no direct effect on the family or family stability, nor does it affect any of the factors listed above. There may be an indirect effect on families through the facilitation of projects that enhance enjoyment of leisure time spent by families, but these effects cannot be accurately quantified.