



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 30-240-10 et seq.
Regulation Title:	Certification Procedures for the Disadvantaged and Women-Owned Business Program
Action Title:	Revision to APA-Exempt Regulation Forms
Date:	May 4, 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 sets forth the requirements to be followed by firms seeking certification as a participant in VDOT's Disadvantaged Business Enterprise (DBE) Program as a prerequisite for bidding on contracts awarded by the Commonwealth Transportation Board (CTB). Forms associated with the regulation are designed to help determine:

- If the applicant firm meets federal requirements and guidelines to be considered a small business under applicable law and regulation (49 CFR, Part 26, and § 3 of the Small Business Act);
- If protected class individuals (women and minorities) own the firm;
- The identity of those individuals with managerial and operational control of the firm; and
- If the firm has the basic expertise, capital, equipment, and other resources to perform highway- and related types of work.

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 (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.

§ 33.1-12 of the *Code of Virginia* establishes the general duties of the Commonwealth Transportation Board (CTB). One of these duties, set forth in (2), is the authority to let all contracts for the construction and improvement of the roads in the State System of Highways. In (7), it has the authority to review the policies and operation of VDOT. The CTB approved procedures for prequalification (filed separately as 24 VAC 30-130-10 et seq.), forms for which are included as part of this regulation.

In addition, the program outlined by the regulation is required by federal regulation (49 CFR Part 26).

VDOT has no discretion as to setting the criteria or other requirements associated with the program. These parameters are set by the federal government, and VDOT collects the necessary information to comply with federal law. This regulation does not exceed the minimum requirements of the federal mandate. Form C-46, used jointly by the Construction Division and the Equal Opportunity Division, was revised to fulfill requirements of the United States Department of Transportation (49 CFR 26.67) concerning certification standards for participation by disadvantaged business enterprises program for departments of transportation. Form C-32 was revised to more clearly describe the type of information the Construction Division desired to be captured.

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 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. 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 regulation has the following goals:

1. To ensure that only disadvantaged business owners are certified to simplify compliance with state and federal requirements, thereby improving their opportunity to compete for contracts
2. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
3. To achieve satisfactory audit reports on program components.

VDOT believes that these goals are being met. The Equal Opportunity Division, the unit responsible for administering the program, submits a plan on the program to the Federal Highway Administration annually. In addition, the Department of Minority Business Enterprise, another state agency, offers assistance to disadvantaged businesses.

This regulation has no direct effect on the family or family stability. However, by improving the ability of disadvantaged businesses to compete for contracts with the Commonwealth, the economic health of affected businesses may be improved, and a greater number of such businesses may result, thereby increasing the overall pool of qualified bidders to the advantage of both VDOT and bidder alike. In turn, this improvement may encourage economic self-sufficiency and increase disposable family income as a result of increased economic competition.

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.

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.

The program outlined by the regulation is required by federal law. Therefore, there is no viable alternative to the 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.

VDOT consulted with the Registrar's Office as to how this regulation should be filed, because it is essentially a series of forms. Since previous filings have been made by description, the Registrar directed that VDOT follow this practice for the proposed amendments. An application to file the regulation by description was filed with the Registrar on April 30, 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 amended regulation became effective upon receipt by the Registrar. VDOT expects the regulation will be published in *The Virginia Register* in the spring 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.

The regulation consists of a series of forms completed by applicants and returned to VDOT (C-32, C-46, a Personal Financial Statement Form, and a Program Registration Form). Forms and information concerning the Prequalification process & DBE Program are available from the following website:

<http://www.vdot.state.va.us/conbbs/prequal/prequal.htm#prequalification>.

VDOT sent a copy of the revised forms with cited statutes for promulgation (§ 33.1-12 (2) and (7), and 49 CFR Part 26.67) to the Office of the Attorney General requesting a certification letter. The Office of the Attorney General responded that VDOT has the authority to promulgate the revisions as outlined, and affirmed the APA exemption in letters dated January 22, 2001, and April 25, 2001.

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 direct effect on the family or family stability. However, by improving the ability of disadvantaged businesses to compete for contracts with the Commonwealth, the economic health of affected businesses may be improved, and a greater number of such businesses may result, thereby increasing the overall pool of qualified bidders to the advantage of both VDOT and bidder alike. In turn, this improvement may encourage economic self-sufficiency and increase disposable family income as a result of increased economic competition.