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## Exempt Action Final Regulation Agency Background Document

<b>Agency name</b>	Commonwealth Transportation Board (Va. Dept. of Transp.)
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC 30-480
<b>Regulation title</b>	Arterial Networks
<b>Action title</b>	Repeal of Exempt Regulation
<b>Final agency action date</b>	June 19, 2003
<b>Document preparation date</b>	June 24, 2003

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006(A) of the of the Administrative Process Act (APA) ([townhall.state.va.us/dpbpages/dpb\\_apa.htm](http://townhall.state.va.us/dpbpages/dpb_apa.htm)), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act ([leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100](http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4100)), the *Virginia Register Form, Style, and Procedure Manual* ([legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)), and Executive Orders 21 (02) and 58 (99) ([governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html))

### Summary

*Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulation establishes the criteria that highways forming the Arterial Network of the State Highway System must meet. In 1993, the Office of the Attorney General found that this regulation is exempt from the APA under § 9-6.14:4.1 B 3 (now § 2.2-4002 B3) (see Attachment A). It appeared originally as DPM 8-2 (Arterial Networks), and was filed by description.

The regulation is based on a March 19, 1964, resolution of the CTB's predecessor, the State Highway Commission. This earlier resolution was passed as a result of a 1962 Needs Study conducted by the Highway Study Commission and subsequent General Assembly amendment of § 23.1 of the Code of Virginia to authorize the Commission to establish the Arterial Network.

The 2003 General Assembly enacted Chapter 302 (see Attachment B), which repealed the set of statutes (§§ [33.1-26](#) through [33.1-30](#)) of the Code of Virginia, along with Chapter 620 of the Acts of Assembly of 1983, and Chapter 504 of the Acts of Assembly of 1985, all of which dealt with the Arterial Network. As of July 1, 2003, this regulation's underlying authority will expire, and the CTB will be unable to enforce this regulation.

By resolution dated June 19, 2003, the Commonwealth Transportation Board repealed 24 VAC 30-480-10 et seq. (Arterial Networks). Simultaneously, the CTB also rescinded its prior resolution of March 19, 1964, which formally listed the roads comprising the Arterial Network, along with the qualifying criteria for future inclusion. This latter action was taken at the recommendation of the Office of the Attorney General (see Attachment C) to eliminate any confusion in the future, although the rescission is not a legal requirement.

### Family impact

*Assess the impact of this regulatory action on the institution of the family and family stability.*

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Repeal of this regulation affects none of the items listed above.

**ATTACHMENT A  
1993 OAG OPINION**



COMMONWEALTH of VIRGINIA

Stephen D. Rosenthal  
Attorney General

Office of the Attorney General  
Richmond 23219

Supreme Court Building  
101 North Eighth Street  
Richmond, Virginia 23219  
304 - 786 - 2071

August 10, 1993

Mr. David L. Roberts  
Management Services  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219

Dear Mr. Roberts:

Here is my analysis of the filing requirement with the Registrar. The exemptions noted, in some instances, might not survive a strong challenge, but are defensible. I recognize the Registrar may allow only a listing, in lieu of filing. That might work for Speed limits and Weight limits reductions.

With respect to the Department of Rail and Public Transportation, the Rail Corridor Preservation and Industrial Rail Access both need to be filed, but are exempt from APA public hearing process per § 9-6.14:4.1B(4). I imagine that the Transit side have some documents, too, but have not been called upon to review them.

Sincerely,

A handwritten signature in cursive script that reads "John J. Beall, Jr.".

John J. Beall, Jr.

Senior Assistant Attorney General

56/157

Attachment

- l. DPM 7-7: Industrial Access Funding, § 9-6.14:4.1B(4)
  - m. DPM 8-1: Criteria for Transferring Secondary Roads to the Primary System, § 9-6.14:4.1B(3)
  - n. DPM 8-2: Arterial Networks, § 9-6.14:4.1B(3)
  - o. DPM 8-3: Roads in the Grounds of State Institutions, § 9-6.14:4.1B(3)
  - p. DPM 8-4: Roads in the Grounds of State Parks, § 9-6.14:4.1B(3)
  - q. DPM 8-5: Frontage Roads, § 9-6.14:4.1B(3)
  - r. DPM 9-1: Classifying and Marking State Highways, § 9-6.14:4.1B(3) & (11)
  - s. DPM 9-4: Roadway and Structures Lighting, § 9-6.14:4.1B(3) & (4)
  - t. DPM 9-5: Conveyance of Lands & Disposal of Improvements, § 9-6.14:4.1B(4)
5. MSD Manual
  6. Workload Assessment System Manuals
  7. Value Engineering Manual
  8. CQIP Manual

Documents 1 and 3 have been promulgated under the APA. Document 2 is simply a Manual bringing together all existing rules in one volume.

The DPM's from Document 4 need to be filed with the Registrar. Exceptions from the APA public hearing process exist for each DPM. They are listed.

The last 4 documents are internal, instructional tools.

**ATTACHMENT B**  
**VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION**  
**CHAPTER 302**

*An Act to amend and reenact §§ 33.1-55 and 33.1-221.1:2 of the Code of Virginia and to repeal §§ 33.1-26 through 33.1-30 of the Code of Virginia, Chapter 620 of the Acts of Assembly of 1983 and Chapter 504 of the Acts of Assembly of 1985, relating to the arterial network of highways.*

[H 1487]

Approved March 16, 2003

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 33.1-55 and 33.1-221.1:2 of the Code of Virginia are amended and reenacted as follows:**

§ 33.1-55. Relocation or removal of utility facilities within projects on Interstate System.

(a) Whenever the Board shall determine that it is necessary that any tracks, pipes, mains, conduits, cables, wires, towers or other structures, equipment and appliances (herein called "facilities") of any utility as herein defined, in, on, under, over or along existing streets which are to be included within any project on the Interstate System within cities or towns should be relocated or removed, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Board as a part of the cost of such project.

For the purposes of subsection (a) of this section, the term "utility" shall include publicly, privately, and cooperatively owned utilities and the term "cost of relocation or removal" shall include the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing utility facilities in connection with any project on the Interstate System within cities or towns is hereby declared to be a cost of highway construction.

(b) Whenever the Board shall determine that it is necessary that any tracks, pipes, mains, conduits, cables, wires, towers or other structures, equipment and appliances (herein called "facilities") of any utility as herein defined, in, on, under, over or along existing streets which are to be included within any project on the state arterial network should be relocated or removed, the owner or operator of such facilities shall relocate or remove the same in accordance with the order of the Board. The cost of such relocation or removal, as herein defined, including the cost of installing such facilities in a new location or locations, and the cost of any lands, or any rights

or interest in lands, and any other rights, required to accomplish such relocation or removal, shall be ascertained and paid by the Board as a part of the cost of such project.

For the purpose of subsection (b) of this section, the term "utility" shall mean utilities owned by a county, city, town, or public authority and the term "cost of relocation or removal" shall include the entire amount paid by such utility properly attributable to such relocation or removal after deducting therefrom any increase in the value of the new facility and any salvage value derived from the old facility.

The cost of relocating or removing utility facilities owned by a county, city, town, or public authority in connection with any project on the state arterial network is hereby declared to be a cost of highway construction.

§ 33.1-221.1:2. U.S. Route 58 Corridor Development Program.

A. The General Assembly declares it to be in the public interest that the economic development needs and economic growth potential of south-central and southwestern Virginia be addressed by a special nonreverting fund which shall be a part of the Transportation Trust Fund and which shall be known as the U.S. Route 58 Corridor Development Fund as established in § 58.1-815 (the Fund). Moneys contained in the Fund shall be used for the costs of providing an adequate, modern, safe, and efficient highway system, generally along Virginia's southern boundary (the Program), including without limitation, environmental and engineering studies, rights of way acquisition, construction, improvements and financing costs.

B. Allocations from this Fund shall be made annually by the Commonwealth Transportation Board for the creation and enhancement of a safe, efficient, highway system connecting the communities, businesses, places of employment, and residents of the southwestern-most portion of the Commonwealth to the communities, businesses, places of employment, and residents of the southeastern-most portion of the Commonwealth, thereby enhancing the economic development potential, employment opportunities, mobility and quality along such highway.

C. Allocations from the Fund shall not diminish or replace allocations made or planned to be made from other sources or diminish allocations to which any highway, project, facility, district, system, or locality would be entitled under other provisions of this title, but shall be supplemental to other allocations to the end that highway resource improvements in the U.S. Route 58 Corridor may be accelerated and augmented. Allocations from the Fund may be applied to highway projects in the interstate, primary, secondary, or urban system, contrary provisions of this title notwithstanding. Allocations under this subsection shall not be limited to projects involving only existing U.S. Route 58, but may be made to projects involving other highways, provided that the broader goal of creation of an adequate modern highway system generally along Virginia's southern boundary is served thereby.

D. The Commonwealth Transportation Board may expend such funds from all sources as may be lawfully available to initiate the Program and to support bonds and other obligations referenced in subsection F of this section. Any moneys expended from the Transportation Trust Fund for the

Program, other than moneys contained in the Fund, may be reimbursed from the Fund, to the extent permitted by Article X, Section 9 of the Constitution of Virginia. In the event funds from the U.S. Route 58 Corridor Development Fund are used for projects contained in the Department's fiscal year 1988-89 Six-Year Improvement Program and related to the purposes of this section, such funds shall be reimbursed to the U.S. Route 58 Corridor Development Fund from the Transportation Trust Fund not to exceed the amounts allocated to such projects in the Program.

E. To the maximum extent possible, the Route 58 Corridor shall conform to the arterial network developed by the Commonwealth Transportation Board pursuant to § 33.1-26. The Commonwealth Transportation Board is encouraged to utilize the existing four-lane divided highways, available rights-of-way acquired for additional four-laning, bypasses, connectors, and alternate routes.

F. To the extent permitted by Article X, Section 9 of the Constitution of Virginia, moneys contained in the Fund may be used to secure payment of bonds or other obligations, and the interest thereon, issued in furtherance of the purposes of this section. In addition, the Commonwealth Transportation Board is authorized to receive, dedicate or use legally available Transportation Trust Fund revenues and any other available sources of funds to secure the payment of bonds or other obligations, including interest thereon, in furtherance of the Program. No bond or other obligations payable from revenues of the Fund shall be issued unless specifically approved by the General Assembly. No bond or other obligations, secured in whole or in part by revenues of the Fund, shall pledge the full faith and credit of the Commonwealth.

G. Forty million dollars shall be transferred annually to the Fund with the first such transfer to be made on July 1, 1990, or as soon thereafter as reasonably practicable. Such transfer shall be made by the issuance of a treasury loan at no interest in the amount of \$40 million to the Fund to ensure that the Fund is fully funded on the first day of the fiscal year. Such treasury loan shall be repaid from the Commonwealth's portion of the state recordation tax imposed by Chapter 8 of Title 58.1 designated for the Fund by § 58.1-815. For each fiscal year following July 1, 1990, the Secretary of Finance is authorized to make additional treasury loans in the amount of \$40 million on July 1 of such fiscal years, and such treasury loans shall be repaid in a like manner as provided in the preceding sentence.

**2. That §§ 33.1-26 through 33.1-30 of the Code of Virginia, Chapter 620 of the Acts of Assembly of 1983, and Chapter 504 of the Acts of Assembly of 1985 are repealed.**

**3. That the provisions of this act shall not be construed to alter state funding of maintenance, maintenance replacement, construction, or reconstruction of former arterial network projects within the boundaries of any city.**

ATTACHMENT C  
OAG OPINION ON REPEAL



COMMONWEALTH of VIRGINIA

Office of the Attorney General  
Richmond 23219

Jerry W. Kilgore  
Attorney General

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May 9, 2003

David L. Roberts, Policy & Planner Specialist II  
Management Services Division  
Virginia Department of Transportation  
1401 East Broad Street  
Richmond, Virginia 23219

Re: Status of DPM 8-2 (Arterial Highways)  
24 VAC 30-480-10

Dear Mr. Roberts:

You reported that the General Assembly, at its 2003 Session enacted Chapter 302 that repeals all provisions in the Code of Virginia referring to the arterial network of highways. You posed three questions.

I.

First, can the 24 VAC 30-480-10 regulation be eliminated through the procedure currently employed, e.g. review of the proposed action by the Attorney General, posting that on the DPB's Regulatory Town Hall, and publication in *The Virginia Register*?

Under §2.2-4006 (A)(4)(a) provides that regulations necessary to conform to changes in Virginia statutory law when no agency discretion is involved shall be exempt from the Notice and Public Hearing process required for agency regulatory action. The General Assembly's repeal that you describe renders the regulations unenforceable when the statute becomes effective, and allows no agency discretion. Article 6 of Administrative Process Act, however, as you suggest, needs to be followed. Thus, the cancellation of 24 VAC 30-480-10 should be accomplished.

II.

Second, does the CTB need to formally rescind the resolution of March 19, 1964, or in no further action necessary on its part? Legally, there is no need for the CTB to take any action. I recommend, however, that the CTB do so, and specifically direct that



David L. Roberts, Policy & Planner Specialist II  
May 9, 2003  
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the rescision be noted in the CTB Board records of March 19, 1964. This action will help future researchers.

### III.

Third, given that the 2003 legislation does not alter any state funding of maintenance, maintenance replacement, construction, or reconstruction of former arterial network projects within the boundaries of any city, what type of reference, if any, would be sufficient for future resolutions to contain?

This is difficult to answer. After July 1, 2003, these roads will either simply be primary roads or primary extensions within corporate limits. Given the Third Enactment clause in the legislation, it appears that the current arrangements between the Department and the localities as to maintenance will remain in effect, unless formally altered by subsequent agreement. I enclose an exchange of e-mail that I had with Mr. Bruce Clarke that suggests where some controversy may arise in light of the legislation.

### Conclusion

It is my opinion that 24 VAC 30-480-10 be taken out of the Virginia Administrative Code. That action would eliminate DPM 8-2, too. I recommend that the CTB formally rescind its March 19, 1964 resolution, although not legally necessary.

I hope that this is responsive to your inquiry.

Sincerely,



John J. Beall, Jr.  
Senior Assistant Attorney General

Lroberts.arterialhwys