



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 30-440-10
Regulation Title:	Recreational Access Funding
Action Title:	Repeal APA-Exempt Regulation
Date:	March 6, 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 in VDOT's Department Policy Memoranda Manual. It contains a brief listing of policy, funding criteria, and limitations of the Recreational Access Fund Program, as administered by the Commonwealth Transportation Board (CTB). The Office of the Attorney General determined that the regulation is exempt from the APA under § 9-6.14:4.1B4 by correspondence dated March 1, 2001.

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 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*. 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.

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 limitations on funding uses; conditions under which bikeway access may be considered; and examples of maximum allocations and VDOT contributions for various types of parks. 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.

The regulation was originally prepared as part of VDOT's Department Policy Memoranda Manual in 1991. Since that time, the Secondary Roads Division has prepared a more detailed document on the Recreational Access Program, which has been filed as 24 VAC 30-300-10. VDOT believes that it is redundant and inefficient to have two separate regulations addressing the same topic, and that the DPM should be terminated. VDOT plans to replace the DPM with a statement informing users of where electronic or paper copies of 24 VAC 30-300-10 can be obtained.

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.

For the reasons listed above, VDOT repealed the regulation entitled *Recreational Access Funding* by signature of the Deputy Commissioner on March 3, 2001. Under the rules established in the *Registrar's Form, Style, and Procedure Manual*, actions exempt from the APA under the provisions of § 9-6.14:4.1 B become effective upon filing, so the action will become effective upon receipt by the Registrar. VDOT expects the regulatory action 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.

Since the regulation is being repealed, no text is attached. The Office of the Attorney General originally reviewed this regulation in 1993, and found that it was exempt from the APA under the following exemption: § 9-6.14:4.1 B (4), which exempts regulations dealing with grants of state or federal funds or property. The Office of the Attorney General reviewed the amended regulation and issued an opinion dated February 6, 2001, that VDOT has the authority to repeal the regulation, and that it comports with applicable state and federal law.

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, 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.