



Virginia  
Regulatory  
Town Hall

Periodic Review and  
Exempt Action or Exempt Agency Final Regulation  
Agency Background Document

<b>Agency Name:</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>VAC Chapter Number:</b>	24 VAC 30-370-10 et seq.
<b>Regulation Title:</b>	Copyright Dates of VDOT Properties
<b>Action Title:</b>	Repeal of APA-Exempt Regulation
<b>Date:</b>	July 20, 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 establishes the rules for designating materials or other property created or produced using state-owned resources, during work hours, or within the scope of employment, as copyrighted by the Commonwealth of Virginia. The Office of the Attorney General has determined that this regulation is exempt from the APA under § 9-6.14:4.1 C (2) by correspondence dated June 29, 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.*

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The basis for this regulation is as follows:

- § 2.1-20.1:1 of the Code of Virginia deals with ownership of patents and copyrights developed by state employees. Under this statute, patents, copyrights or materials which were potentially patentable or copyrightable developed by a state employee during working hours or within the scope of his employment or when using state-owned or state-controlled facilities are the property of the Commonwealth of Virginia. The statute also directs the Governor to set such policies as he deems necessary to implement this provision.

Such policies have been established by Executive Memorandum 4 (95). The Executive Memorandum defines the terms “ownership” and establishes disclosure requirements, authorizes the Secretary of Administration to manage the registration and potential commercialization of the intellectual property. The regulation includes information on complying with provisions of the Executive Memorandum.

- The Commonwealth Transportation Board (CTB) has authority under § 33.1-12(7) to review and approve policies of VDOT, and to assist in establishing such policies.

This regulation does not exceed the minimum requirements of the state mandate, as none are established.

**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.*

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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.*

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Goals:

1. To protect the Commonwealth's interest in state-owned properties.
2. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
3. Is the regulation written clearly and understandably?

Goal 1: In the course of their daily activities, VDOT employees may develop or invent entirely new creations, or creations that incorporate existing technology or devices. Some of these creations may have marketability on a broader scale that could benefit the Commonwealth. VDOT believes that the regulation helps protect the Commonwealth's interest by establishing simple rules concerning the placement and applicability of copyrights, and also by referencing a resource within VDOT that employee may consult for more information on patents, copyrights, trademarks, and related issues.

Goal 2: The regulation deals with creative activities of state employees during working hours, or when using state-owned facilities, so the effect on the public at large is not significant. However, to the extent that public funds are expended to develop the devices, software, publications and other creations, it is reasonable to ensure that any financial benefit that may accrue from expenditures to make these creations can be acquired by the Commonwealth. Therefore, this regulation can be seen as serving the public welfare by establishing rules for VDOT employees to follow that may help defray the costs of state government.

Goal 3: The regulation defines relevant terms, identifies the types of items covered by the policy, and details where appropriate markings may be located on creations. VDOT believes that the lack of public comment received in response to the Public Notice indicates general satisfaction with the regulation as written.

This regulation has no effect on the family or family stability.

## 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.*

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As a result of the Periodic Review, VDOT prepared amendments to the regulation, and forwarded them to the Office of the Attorney General for review. In a letter dated June 29, 2001, the OAG reversed a previous opinion that the subject matter was fileable as a regulation, because “the matters covered by the ‘regulation’ are not regulatory in nature and VDOT does not need a regulation to deal with these matters.” The letter also stated that if VDOT wished to cover the subject by a regulation, then the amendments would be exempt under § 9-6.14:4.1 C 3 and C 2. VDOT’s Transportation Research Council, the unit responsible for administering Intellectual Property issues, believed that the subject matter of the “regulation” merited retention. VDOT prepared a regulatory package with the amendments, and submitted it to the Registrar for publication.

The “regulation” had been filed by description in 1995 based on the previous opinion. Upon reviewing the actual text of the amended regulation, along with the OAG’s latest letter, in correspondence dated July 17, 2001, the Registrar concurred that the subject matter was not regulatory in nature. Therefore, VDOT was advised that the “regulation” could be repealed, but retained as a statement of policy not subject to any regulatory filing requirements. This advice was based on the fact that ownership of patents, copyrights or materials developed by a state employee during working hours or within the scope of his employment or when using state-owned or state-controlled facilities is addressed specifically in the Code of Virginia. Furthermore, the Executive Memorandum issued periodically by the Governor is the mechanism by which the policies concerning this subject are implemented. This directive applies to all state employees, not just those within VDOT.

Therefore, VDOT followed the advice of the OAG and the Registrar, and repealed the “regulation.” It will be retained as a statement of policy within VDOT, but not subject to the filing requirements applying to regulations.

### 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.*

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VDOT repealed the regulation entitled *Copyrights of VDOT Properties* by signature of the Deputy Commissioner on July 19, 2001. VDOT expects the action will be published in *The Virginia Register* in August 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.*

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Since the “regulation” is being repealed, no proposed text is attached. See above for detailed discussion concerning the OAG’s finding of the status of the “regulation,” and the Registrar’s advice to VDOT concerning its repeal.

**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.*

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This regulation has no effect on the institution of the family and family stability, nor does it affect the other factors listed above.