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## Periodic Review Report of Findings

<b>Agency name</b>	Commonwealth Transportation Board
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC 30-240
<b>Regulation title</b>	Certification Procedures for the Disadvantaged and Women-Owned Business Program
<b>Date this document prepared</b>	September 10, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"CTB" means the Commonwealth Transportation Board.

"CFR" means the Code of Federal Regulations.

"DBE" means a Disadvantaged Business Enterprise.

"SBSD" means the Department of Small Business and Supplier Diversity.

## Legal Basis

*Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

1) Promulgating entity is the Commonwealth Transportation Board.

2) *Code of Virginia* § 33.2-209 grants the CTB the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million.

*Code of Virginia* § 33.2-210 grants the CTB the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations.

*Code of Virginia* § 33.2-215 grants the CTB the power and duty to review and approve policies and transportation objectives of the Department of Transportation and the Department of Rail and Public Transportation, to assist in establishing such policies and objectives, to oversee the execution thereof, and to report on these policies and objectives to the Commissioner of Highways and the Director of the Department of Rail and Public Transportation, respectively.

The Code of Federal Regulations, Title 49, Part 26 (49 CFR 26) requires that recipients of federal-aid highway funds establish procedures for designation as a Disadvantaged Business Enterprise using polices and guidelines set forth in Part 26.

### Alternatives

*Please describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.*

No alternatives were considered.

### Public Comment

*Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

There have been no public comments received.

Commenter	Comment	Agency response

### Effectiveness

*Pursuant to § 2.2-4017, please indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.*

This regulation is not necessary for the protection of the public health, safety and welfare because the certification of disadvantaged business enterprises and small businesses is now performed by SBSB.

### Decision

*Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

The requirements of 24 VAC 30-240 and 49 CFR 26 are now implemented by SBSB, which also then maintains a database of certified small businesses. The Virginia Department of Transportation and the Department of Rail and Public Transportation direct and encourages entities that want to do business with the agency and who may qualify for certification as a DBE to the SBSB to become certified and then uses those businesses on Department of Transportation and the Department of Rail and Public Transportation contracts that have been certified. Therefore, the CTB recommends repeal of this regulation.

### Small Business Impact

*As required by § 2.2-4007.1 E and F of the Code of Virginia, include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with the stated objectives of applicable law, will minimize the economic impact of regulations on small businesses.*

The Department of Transportation and the Department of Rail and Public Transportation use certified small businesses and direct their contractors to use certified small business to the greatest extent possible. However, the certification process is now administered by SBSB. Therefore, 24 VAC 30-240 is no longer necessary and should be repealed.