

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGED
MEMORANDUM

TO: Jennifer Pickett
Department of Rail and Public Transportation

FROM: Nancy C. Auth
Senior Assistant Attorney General

DATE: August 22, 2008

SUBJECT: Virginia Administrative Code Sections 24 VAC 25-10-10 and 24 VAC 25-20-10

I am writing in response to your question as to whether 24 VAC 25-10-10 and 24 VAC 25-20-10 are exempt from the Administrative Process Act.

Section 2.2-4002(B)(4) provides that Agency action relating to grants of state or federal funds or property are exempt from the Administrative Process Act. Agency action is defined in § 2.2-4001 as either an agency's regulation or case decision of both, any violation compliance, or noncompliance with which could be a basis for the imposition of injunctive orders penal or civil sanctions of any kind, or the grant of denial of relief or of a license, right or benefit by any agency or court. Since 24 VAC 25-10-10 concerns the administrative procedures for grants under the industrial access program, and since 24 VAC 25-10-10 concerns the administrative procedures for grants under the Rail Preservation Fund, they both fall under the exemption from the Administrative Process Act of § 2.2-4002(B)(4).

Please let me know if you have additional questions.