



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 2

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 11, 2019

MOTION

Made By: Ms. Hynes, Seconded By: Mr. Kasprowicz
Action: Motion Carried, Unanimously

Title: Periodic Regulatory Review

WHEREAS, the Virginia Administrative Process Act (the APA), particularly in §§ 2.2-4007.1 and 2.2-4017 of the *Code of Virginia*, requires that all state agencies that adopt regulations periodically review those regulations, including consideration of: 1) the extent to which regulations remain supported by statutory authority and do not duplicate, overlap, or conflict with state or federal law; 2) the nature of complaints or comments received from the public; 3) whether the regulations are necessary for the protection of public health, safety and welfare; 4) whether the regulations are clearly written and easily understandable; 5) whether the regulations' economic impacts on small businesses and families are minimized as much as possible; and 6) the length of time since the regulation has been evaluated; and

WHEREAS, Executive Order Number 14 (2018, amended) requires all regulations to be so reviewed every four years and specifies the procedures for conducting such review; and

WHEREAS, the Virginia Department of Transportation (VDOT) conducted a periodic review of the regulations listed in the table below, and pursuant to the requirements set forth in the APA and the process established in the Executive Order, notified the public of the regulations' ongoing periodic review on the Virginia Regulatory Town Hall website and solicited comment from the public for a minimum of 21 days; and

WHEREAS, VDOT has completed all facets of the regulatory review of the regulations listed in the table below in accordance with the Executive Order 14 and the APA, including the completion of a Periodic Review Report of Findings for each regulation (attached as Exhibits A through G); and

completion of a Periodic Review Report of Findings for each regulation (attached as Exhibits A through G); and

WHEREAS, no public comments were submitted regarding the regulations under periodic review and based upon the results of the review, VDOT recommends action for each regulation as determined in the relevant Periodic Review Report of Findings for each regulation and set forth in the table below:

Chapter	Title	Proposed Disposition
24 VAC 30-41	Rules and Regulations Governing Relocation Assistance	Retain as is
24 VAC 30-200	Vegetation Control Regulations on State Rights-of-Way	Amend
24 VAC 30-240	Certification Procedures for the Disadvantaged and Women-Owned Business Program	Repeal
24 VAC 30-401	Change of Limited Access Control	Retain as is
24 VAC 30-530	Roadway and Structure Lighting	Repeal
24 VAC 30-580	Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways	Amend
24 VAC 30-590	Policies and Procedures for Control of Residential and Non-Residential Cut-Through Traffic	Repeal

; and

WHEREAS, the Commonwealth Transportation Board originally adopted the regulations listed in the table below pursuant to its authority in § 33.2-210 of the *Code of Virginia* and other relevant sections of the *Code of Virginia*.

NOW THEREFORE, BE IT RESOLVED, that the Commonwealth Transportation Board approves and adopts the respective Periodic Review Report of Findings for each of the regulations listed in the table above, including the proposed disposition for each regulation.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board directs the Commissioner of Highways or his designees to take all actions necessary to complete the

periodic reviews for the regulations listed in the table above, and for those regulations for which repeal is approved, to complete the process necessary to repeal said regulations.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board affirms that any current Policies of the Commonwealth Transportation Board relating to those regulations set out at 24 VAC 30-530 (Roadway and Structure Lighting) and 24 VAC 30-590 (Policies and Procedures for Control of Residential and Non-Residential Cut-Through Traffic) for which repeal is approved shall not be affected by this repeal action, however, the Commonwealth Transportation Board directs the Commissioner of Highways or his designees to begin a review of those Policies and to present any recommendations for further revisions or other action on those Policies to the Commonwealth Transportation Board no later than July 31, 2020.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board directs the Commissioner of Highways or his designees, for the regulation(s) for which amendment is approved, to take all actions necessary to begin the process of amending said regulation(s), submitting to the Board the proposed amendment(s) for approval prior to completing the process to amend the regulation(s).

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CTB Decision Brief

Periodic Regulatory Review

Issue: The Administrative Process Act (APA) requires all state agencies that adopt regulations to periodically review those regulations. Executive Order 14 (2018) mandates that these reviews take place every four years to determine if the regulation should be continued with no changes or be amended or be repealed. In accordance with these requirements, the Virginia Department of Transportation (VDOT) has reviewed the regulations listed below and is providing recommendations as to the action to be taken by the Commonwealth Transportation Board (CTB) for each regulation.

Facts:

- The APA, particularly in §§ 2.2-4007.1 and 2.2-4017 of the *Code of Virginia*, requires that all state agencies that adopt regulations periodically review those regulations, including consideration of: 1) the extent to which regulations remain supported by statutory authority and do not duplicate, overlap, or conflict with state or federal law; 2) the nature of complaints or comments received from the public; 3) whether the regulations are necessary for the protection of public health, safety and welfare; 4) whether the regulations are clearly written and easily understandable; 5) whether the regulations' economic impacts on small businesses and families are minimized as much as possible; and 6) the length of time since the regulation has been evaluated.
- The Governor's Executive Order Number 14 (2018, amended) requires all regulations to be so reviewed every four years and specifies the procedures for conducting such review. Chapter 444 of the 2018 Acts of Assembly requires the Department of Planning and Budget (DPB) to track and report to the General Assembly annually which agencies are complying with the periodic review requirements.
- VDOT conducted a periodic review of the regulations listed in the table below, and pursuant to the requirements set forth in the APA and the process established in the Executive Order, notified the public of the regulations' ongoing periodic review on the Virginia Regulatory Town Hall website and solicited comment from the public for 25 days, satisfying the minimum requirement of 21 days. No public comments were submitted regarding the regulations under periodic review.
- VDOT has completed all facets of the regulatory review of the regulations listed in the table below, and has completed the Periodic Review Report of Findings for each regulation (Attached as Exhibits A-G), which is to be filed with the Virginia Registrar to complete the periodic review process.
- The regulations reviewed are listed in the table below. The table is followed by a description of each regulation and the findings made by VDOT based upon the review.

Chapter	Title	Proposed Disposition
24 VAC 30-41	Rules and Regulations Governing Relocation Assistance	Retain as is
24 VAC 30-200	Vegetation Control Regulations on State Rights-of-Way	Amend
24 VAC 30-240	Certification Procedures for the Disadvantaged and Women-Owned Business Program	Repeal
24 VAC 30-401	Change of Limited Access Control	Retain as is
24 VAC 30-530	Roadway and Structure Lighting	Repeal (but retain/reevaluate CTB Policy)
24 VAC 30-580	Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways	Amend
24 VAC 30-590	Policies and Procedures for Control of Residential and Non-Residential Cut-Through Traffic	Repeal (but retain/reevaluate CTB Policy)

- **24 VAC 30-41 Rules and Regulations Governing Relocation Assistance**

The Rules and Regulations Governing Relocation Assistance were promulgated by the CTB as authorized by § 25.1-402 of the *Code of Virginia*, which provides assurances to the Federal Highway Administration that VDOT will comply with the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. §4601 et seq), as amended, and as required in 49 CFR §24.4 in order to receive federal financial assistance. The regulation was last amended in 2014. VDOT is recommending that the regulation be retained as is.

- **24 VAC 30-200 Vegetation Control Regulations on State Rights-of-Way**

VDOT is required, pursuant to § 33.2-1221 (B)(3) of the *Code of Virginia*, to implement and promulgate regulations that allow VDOT to permit vegetation removal, set forth the standards for which vegetation removal shall be permissible, and analyze proposed vegetation removal applications, in order to mitigate any potential adverse impacts on the aesthetics and health of vegetation and state-controlled highways. The regulation currently stipulates that all cuttings to make outdoor advertising signs more visible from the roadway shall be limited to vegetation with trunk base diameters of less than six inches and pruning of limbs up to four inches in diameter, and all cuttings to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches and pruning of limbs up to two

inches in diameter. VDOT has determined that the regulation currently treats business-related vegetation removal differently than that for outdoor advertising signs, thus treating the regulation of outdoor advertising signs and businesses unequally. VDOT has also determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting vegetation in front of businesses is too restrictive and is impractical in many cases, due to the rate of vegetation growth. Therefore, VDOT is recommending that the regulation should be amended to allow the equal treatment and regulation of both outdoor advertising signs and businesses by allowing cutting of vegetation with trunk base diameters of less than six inches.

- **24 VAC 30-240 Certification Procedures for the Disadvantaged and Women-Owned Business Program**

This regulation sets forth the requirements to be followed by firms seeking certification as a Disadvantaged/Women-Owned Business Enterprise (DBE/WBE) as a prerequisite for bidding on contracts awarded by the CTB. The regulation has not been amended since 2001. Since that time, the certification requirements of 24 VAC 30-240 and 49 CFR Part 26 are now implemented by the Department of Small Business and Supplier Diversity (SBSD), which also maintains a database of certified small businesses. The Virginia Department of Transportation and the Department of Rail and Public Transportation direct and encourage entities that want to do business with each respective agency and who may qualify for certification as a DBE or WBE to apply the SBSBD to become certified. VDOT is recommending that the regulation therefore be repealed as unnecessary.

- **24 VAC 30-401 Change in Limited Access Control**

Limited access highways can provide greater vehicle capacity and improved safety over non-limited access highways by reducing the number of interactions with vehicles entering or exiting the highway and by prohibiting pedestrians and other non-motorized traffic from the highway. This regulation specifies the procedures for which the CTB and VDOT will set the limited access boundaries of such highways and adjust those boundaries under certain circumstances and as authorized by § 33.2-401 of the *Code of Virginia*. Many of these procedures are required by current Federal and State laws and regulations addressing the requirements for changes of limited access control on all limited access highways using state and federal funds. VDOT believes that the regulation is clearly written and easily understandable. VDOT is recommending that the regulation be retained as is.

- **24 VAC 30-530 Roadway and Structure Lighting**

The Commissioner of Highways issued a Departmental Memorandum (DM 9-4) in 1995 that specifies the conditions upon which VDOT will pay for the construction and maintenance of roadway lighting, and when those costs should be borne by others, including localities. The CTB adopted DM 9-4 as an official CTB Policy, which is available to the public in the CTB Policy Index on the CTB website. This regulation solely incorporates DM 9-4 by reference. In 2016, the Virginia Code Commission adopted a regulation that prohibits a state agency from incorporating one of its own documents by reference as a regulation except in unique circumstances. VDOT is recommending that the regulation be repealed, although this repeal will have no effect on the validity of DM 9-4 or the CTB's Policy. In response to issues raised by CTB members, VDOT intends to begin the review of the CTB Policy and to propose potential amendments to the Policy for the CTB's consideration by July 31, 2020.

- **24 VAC 30-580 Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways**

Section 46.2-809 of the *Code of Virginia* provides that the CTB, in response to a formal request by a local governing body may, after due notice and a proper hearing, prohibit or restrict through truck traffic on a primary or secondary highway. This regulation specifies the criteria and procedures by which a prohibition or restriction on through truck traffic may be established. In the regulation, the CTB has delegated the authority to impose such through truck restrictions on secondary highways to the Commissioner of Highways after consideration of certain criteria, while the CTB retained this authority for primary highways. In order to streamline the process, the VDOT suggests amending the regulation to allow VDOT District Administrators/Engineers to deny requests without presenting those requests to the Commissioner of Highways or CTB, respectively, only where the request clearly and objectively does not meet the required criteria.

- **24 VAC 30-590 Policies and Procedures for Control of Residential and Non-Residential Cut-Through Traffic**

Section 46.2-809.1 of the *Code of Virginia* provides that the CTB may develop a residential cut-through traffic policy and procedure for the control of residential cut-through traffic on designated secondary highways. The regulation simply references the policy established by the CTB. As noted above, in 2016, the Virginia Code Commission adopted a regulation that prohibits a state agency from incorporating one of its own documents by reference as a regulation except in unique circumstances. VDOT is recommending that the regulation be repealed, although this repeal will have no effect on the validity of the CTB's Policy. In response to issues raised by one or more CTB members, VDOT intends to begin the review of the CTB Policy and to propose potential amendments to the Policy for the CTB's consideration by July 31, 2020.

Recommendations: VDOT recommends that the following regulations: Rules and Regulations Governing Relocation Assistance, and Change in Limited Access Control be retained as is. VDOT further recommends that Vegetation Control Regulations on State Rights-of-Way and Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways be amended as specified above. Finally it is recommended that the Certification Procedures for the Disadvantaged and Women-Owned Business Program, the Roadway and Structure Lighting regulation, and the Policies and Procedures for Control of Residential and Non-Residential Cut-Through Traffic be repealed and that the policies relating to the latter two regulations be reviewed over the ensuing months and any proposed revisions be submitted to the CTB.

Action Required by CTB: A resolution will be presented for CTB approval to complete the periodic review of these regulations by filing the respective Periodic Review Report of Findings for each regulation listed, and to authorize the Commissioner of Highways or his designee to take any actions necessary to amend or repeal the regulations that are recommended to be so amended or repealed.

Result, if Approved: The periodic reviews of the noted regulations will be completed, and the regulations will be retained as is, amended or repealed as recommended.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: There were no comments or other input received from the public.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board (CTB)
Virginia Administrative Code (VAC) citation	24 VAC 30-41
Regulation title	Rules and Regulations Governing Relocation Assistance
Date this document prepared	08/16/2019

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.

CFR – Code of Federal Regulations
U.S.C. – United States Code
VAC – Virginia Administrative Code

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.

This regulation was promulgated by the Commonwealth Transportation Board as authorized by § 25.1-402 of the *Code of Virginia*, which provides assurances to the Federal Highway Administration that the Virginia Department of Transportation will comply with the Uniform Relocation and Assistance and Real

Property Acquisition Policies Act of 1970 (42 U.S.C. §4601 *et seq*), as amended, and as required in 49 CFR §24.4 in order to receive federal financial assistance.

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.

There are no viable alternatives to this regulation.

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.

No public comments were received during the public comment period.

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 necessary for the protection of public health, safety and welfare by providing relocation benefits and advisory assistance to persons displaced by a highway construction project and to ensure that they are treated fairly and equitably. The regulation provides for timely relocation of displaced persons and personal property to meet project schedules. The regulation is clearly written and easily understandable.

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 Commonwealth Transportation Board is proposing to retain this regulation without making any changes.

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.

There is a continued need for this regulation because it is required to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §4601 *et seq.*) in order for the Virginia Department of Transportation to receive federal financial assistance and it provides a system of benefits with the following objectives: “To ensure that person displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and to ensure that Agencies implement these regulations in a manner that is efficient and cost effective.” (49 CFR §24.1(b&c))

This regulation is not overly complex and is consistent with the federal law codified at 42 U.S.C. §4601 *et seq.* and the related federal regulations in 49 CFR, part 24. The regulation does not impact small businesses but does provide eligible relocation benefits and advisory assistance when affected by a state project.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board (Virginia Department of Transportation)
Virginia Administrative Code (VAC) citation	24 VAC 30-200
Regulation title	Vegetation Control Regulations on State Rights-of-Way
Date this document prepared	August 6, 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.

"VDOT" means the Virginia Department of Transportation, the Commissioner of Highways, or a designee.
"CTB" means the Commonwealth Transportation Board.

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.

VDOT has the authority to promulgate this regulation pursuant to § 33.2-1221 (B)(3) of the Code of Virginia, which states in part, "[t]he Commissioner of Highways shall promulgate such regulations as he

deems necessary or desirable to carry out the provisions of this section.” The CTB originally adopted this regulation in 1991, and has amended the regulation in 1998, 2007, 2011 and 2014.

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.

VDOT is required to implement and promulgate regulations that allow VDOT to permit vegetation removal, set forth the standards for which vegetation removal shall be permissible, and analyze proposed vegetation removal applications, in order to mitigate any potential adverse impacts on the aesthetics and health of vegetation and state-controlled highways. The regulation currently stipulates that all cuttings to make outdoor advertising signs more visible from the roadway shall be limited to vegetation with trunk base diameters of less than six inches and pruning of limbs up to four inches in diameter, and all cuttings to make a businesses more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches. VDOT has determined that the regulation currently treats business-related vegetation removal differently than that for outdoor advertising signs, thus treating the regulation of outdoor advertising signs and businesses unequally. VDOT has also determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting vegetation in front of businesses it too restrictive and is impractical in many cases, due to the rate of vegetation growth. Therefore, VDOT contends that the regulation should be amended to allow the equal treatment and regulation of both outdoor advertising signs and businesses.

The alternatives considered by the VDOT are as follows:

1. Amend the regulation to allow cutting and pruning in front of businesses to be consistent with that for outdoor advertising signs, by limiting cutting to vegetation with trunk base diameters of less than six inches and pruning of limbs up to four inches in diameter. This option was selected because issues have been identified that require making changes to the regulation to reduce hardships on the regulated community without sacrificing the public health, safety, and welfare of the citizens of the Commonwealth. Specifically, it was determined that this regulation currently subjects businesses to more restrictive regulation in comparison to outdoor advertising signs, thus creating an inequitable regulation.
2. Amend the regulation to stipulate that all cuttings to make outdoor advertising signs more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches, which is consistent with regulatory requirement for businesses. VDOT has determined that this is not a viable alternative, as a more restrictive regulation of outdoor advertising signs with respect to cutting and pruning would be in conflict of § 33.2-1221(B)(1)(b) of the Code of Virginia.
3. Retain the regulation without amendment. This option was not chosen, because VDOT has determined there is inequity in the regulation as to how outdoor advertising signs and businesses are regulated. VDOT has also determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting vegetation in front of businesses it too restrictive and is impractical in many cases, due to the rate of vegetation growth.
4. Repeal the regulation. This option was not selected because the regulation is still needed to protect public health, safety, and welfare, and to protect the aesthetics and health of vegetation.

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.

No comments were received during the public comment period.

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.

The regulation establishes procedures by which the outdoor advertising industry and businesses can remove vegetation to increase their visibility from a highway, in accordance with agency policies, procedures, and criteria concerning aesthetics and health of vegetation.

With that in mind, VDOT believes this regulation is necessary to protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. VDOT also believes that the administration of this regulation intends to protect the aesthetics and health of vegetation, and ensures that all work performed on VDOT rights-of-way shall comply with the Virginia Work Area Protection Manual.

The regulation allows cutting of vegetation with up to six inches in diameter and pruning of limbs up to four inches in diameter for vegetation in front of outdoor advertising signs, but limits the cutting of vegetation in front of businesses to a maximum of two inches in diameter.

The regulation is clearly written and easily understandable.

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).

VDOT proposes to amend the regulation to allow vegetation removal in front of businesses to be consistent with that for outdoor advertising signs, by increasing the allowable diameter to six inches or less for vegetation and pruning of limbs up to four inches in diameter that can be cut to increase the visibility of businesses from the roadway. VDOT chose this alternative in order to eliminate the regulatory disparities between the outdoor advertising industry and businesses.

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.

There is a continued need for the regulation, as it establishes procedures by which the outdoor advertising industry and businesses can remove vegetation to increase the visibility of outdoor advertising signs and businesses in accordance with agency policies, procedures, and criteria concerning aesthetics and health of vegetation. There have been no complaints received from the public to date. VDOT believes the regulation is not overly complex, and there is no overlap, duplication, or conflict with federal, state laws, or regulations.

The last full evaluation of this regulation was in 2007. Since then, there have been technical amendments to the regulation in 2011 and 2014. Through the examination of the regulation, VDOT has determined that the proposed regulatory change will minimize the economic impact of regulation on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth. VDOT contends that the proposed regulatory change will also be helpful for businesses that are subject to this regulation, as it will be less restrictive and create a more equitable regulation.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24 VAC 30-240
Regulation title	Certification Procedures for the Disadvantaged and Women-Owned Business Program
Date this document prepared	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.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24VAC30-401
Regulation title	Change of Limited Access Control
Date this document prepared	August 1, 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.

No special acronyms are used in this reporting.

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.

The regulation was promulgated by the Commonwealth Transportation Board based on several Federal and State statutory authorities as found in 23 U.S.Code 106, and sections 33.2-210 and 33.2-401 of the Code of Virginia.

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 proposed alternatives were considered viable or are being proposed as part of this review.

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.

No comments were received from the public during the public comment period.

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.

Limited Access highways can provide greater vehicle capacity and improved safety over non-limited access highways by reducing the number of interactions with vehicles entering or exiting the highway and by prohibiting pedestrians and other non-motorized traffic from the highway. This regulation specifies the procedures for which the Commonwealth Transportation Board and the Virginia Department of Transportation will set the limited access boundaries of such highways and adjust those boundaries under certain circumstances. Many of these procedures are required by current Federal and State laws and regulations regarding the requirements for changes of limited access control on all limited access control roadways using state and federal funds. The Commonwealth Transportation Board believes that the regulation is clearly written and easily understandable.

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 Commonwealth Transportation Board has chosen to retain the regulation, as is.

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 regulation is needed for purposes of complying with state and federal laws and regulations regarding changes of limited access control on all limited access control roadways. The regulation is not overly complex, complements state and federal laws and regulations and is structured to support their policy goals and objectives. The last substantive review of the regulation was in 2006.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24 VAC 30-530
Regulation title	Roadway and Structural Lighting
Date this document prepared	09/10/2019

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.

"VDOT" means the Virginia Department of Transportation.

"CTB" means the Commonwealth Transportation Board.

There are no complex technical terms used in this document that require a definition.

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.

Section 33.2-210 of the *Code of Virginia* authorizes the CTB 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. Additionally, the CTB has the power and duty to review and approve policies and transportation objectives of VDOT 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, pursuant to § 33.2-215 of the *Code of Virginia*.

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.

The Commissioner of Highways issued a Departmental Memorandum (DM 9-4) in 1995 that specifies the conditions for when VDOT will pay for the construction and maintenance of roadway lighting, and when those costs should be borne by others, including localities. The CTB adopted DM 9-4 as an official CTB Policy, which is available to the public in the CTB Policy Index on the CTB website.

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 were no comments received during the public comment period following the publication of the Notice of Periodic Review.

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 public health, safety and welfare, because the objectives of the regulation can be achieved through other means, such as the CTB Policy. The current regulation merely references, by description, the underlying CTB Policy in DM 9-4, and has no additional substantive obligations. In 2009, the Attorney General’s Regulatory Reduction Task Force identified this regulation as unnecessary and recommended its repeal for those reasons..

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 CTB is proposing to repeal this regulation while maintaining the underlying policy as it had previously adopted.

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.

This regulation is not necessary, as its objectives may be met through other means, however repeal of this regulation but continued reliance on the underlying CTB Policy does not impact small businesses.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24VAC30-580
Regulation title	Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways
Date this document prepared	09/10/2019

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 Commonwealth Transportation Board.

There are no complex technical terms that require a definition.

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.

The CTB is the promulgating entity. Section 46.2-809 of the *Code of Virginia* provides that the CTB, in response to a formal request by a local governing body may, after due notice and a proper hearing, prohibit or restrict through truck traffic on a primary or secondary highway. More generally, § 33.2-210 of the *Code of Virginia* authorizes the CTB 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.

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.

This regulation specifies the criteria and procedures by which a prohibition or restriction on through truck traffic may be established as provided under § 46.2-809. Section 46.2-809 authorizes the CTB to delegate this authority to a designee, which it has done in this regulation by delegating the authority to impose such through truck restrictions to the Commissioner of Highways on secondary highways after consideration of certain criteria. The CTB retains this authority on primary highways. In order to streamline the process, the CTB suggests amending the regulation to allow VDOT District Administrators/Engineers to deny requests without presenting those requests to the Commissioner of Highways or CTB, respectively, only where the request clearly and objectively does not meet the required criteria.

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.

No comments were received during the public comment period.

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.

The regulation provides for the restriction of trucks from using a segment of highway where they pose a safety risk or are incompatible with the character of the roadway environment. The regulation continues to be necessary for the protection of public health, safety, and welfare. The regulation is clearly written and easily understandable.

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 CTB recommends amending the regulation. As stated above, while the regulation is effective, in order to streamline the process, the CTB suggests amending the regulation to allow VDOT District Administrators/Engineers to deny requests without presenting those requests to the Commissioner of Highways or CTB, respectively, only where the request clearly and objectively does not meet the required criteria..

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.

Retaining and amending the regulation does not impact small businesses. The regulation is not complex, nor does it duplicate or conflict with federal or state laws. The regulation was adopted in 2003, and has not been amended since.



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Periodic Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24VAC30-590
Regulation title	Policy and Procedures for Control of Residential Cut-Through Traffic
Date this document prepared	09/10/2019

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.

No acronyms are present in 24VAC30-590. There are no complex technical terms that require a definition.

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.

The Commonwealth Transportation Board is the promulgating entity. Section 46.2-809.1 of the *Code of Virginia* provides that the Commonwealth Transportation Board may develop a

residential cut-through traffic policy and procedure for the control of residential cut-through traffic on designated secondary highways. The Commonwealth Transportation Board has general authority, pursuant to § 33.2-210 of the *Code of Virginia*, 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

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 are necessary and thus were not considered. The Commonwealth Transportation Board has adopted a policy on this topic that is available on its website.

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.

No comments were received during the public comment period.

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.

24VAC 30-590 does not establish but only references the policy established by the Commonwealth Transportation Board under Section 46.2-809.1. Therefore, this regulation is not necessary for the protection of public health, safety, and welfare because it is duplicative of the policy.

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 Commonwealth Transportation Board recommends repeal of this regulation. As stated above, the regulation simply references the policy established by the Commonwealth Transportation Board under Section 46.2-809.1. Further, a statement that a policy is on file at a specific address does not appear to meet the definition of a “regulation” under §2.2-4001 of the *Code of Virginia*, as they are not a “statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency...” Nor does the policy itself affect the rights of any person; it simply states internal agency procedures and guidance for agency staff in setting residential cut through traffic restrictions.

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.

Repealing this regulation does not impact small businesses.