



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 2

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 9, 2020

MOTION

Made By: Mr. Rucker, Seconded By: Ms. Hynes
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, satisfying the minimum statutory requirement; 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 D); 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 30-61	Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities	Retain as is.
24 VAC 30-315	Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways	Retain as is.
24 VAC 30-340	Debarment or Suspension of Contractors	Repeal (but review procedures/policy for possible revision or rescission).
24 VAC 30-390	Virginia Scenic Highways and Byways	Repeal (but retain policy/procedures)

; and,

WHEREAS, the Commonwealth Transportation Board originally adopted the regulations listed in the table above 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 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

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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 December 31, 2021.

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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 21 days, satisfying the minimum statutory requirement. No public comments were submitted regarding the regulations under periodic review by the CTB.
- 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-D), which is to be filed with the Virginia Registrar to complete the periodic review process.
- The regulations reviewed which are to be considered by the CTB 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 30-61	Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities	Retain as is.
24 VAC 30-315	Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways	Retain as is.
24 VAC 30-340	Debarment or Suspension of Contractors	Repeal (but review procedures/policy for possible revision or rescission).
24 VAC 30-390	Virginia Scenic Highways and Byways	Repeal (but retain policy/procedures).

- **24 VAC 30-61 Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities**

Federal law (49 U.S.C. §5112) authorizes each state to establish, maintain, and enforce designations of specific highway routes over which hazardous material may and may not be transported by motor vehicles and limitations and requirements related to highway routing. The regulation provides restrictions on the transport of hazardous materials over state-owned bridge-tunnel facilities (four urban, water-proximate facilities in the Hampton Roads District, and two rural, distanced-from water facilities in the Bristol District). The regulation is necessary for the protection of the public health, safety, and welfare. A hazardous material spill in a bridge-tunnel facility can be particularly difficult to address and can cause significant damage. VDOT recommends retaining the regulation as is.

- **24 VAC 30-315 Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways**

Section 46.2-830 of the *Code of Virginia* authorizes the Commissioner of Highways to classify, designate, and mark state highways and provide a uniform system of traffic control devices for such highways under the jurisdiction of the Commonwealth. It further states that such system of traffic control devices shall correlate with and, so far as possible, conform to the system adopted in other states. Federal regulation, namely 23 CFR 655.603, specifies that “The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a).” The same federal

regulation further states that “[w]here State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the National MUTCD.” Further, 23 CFR 655.603(b)(2) provides that “States and other Federal agencies are encouraged to adopt the National MUTCD in its entirety as their official Manual on Uniform Traffic Control Devices.”

Uniform standards for traffic control devices (signs, roadway markings, traffic signals, work zone devices, and highway/rail grade crossing devices) promote safe, orderly, and efficient use of the highways for all road users. VDOT recommends retaining the regulation as is.

- **24 VAC 30-340 Debarment or Suspension of Contractors**

Debarment acts to deny contractors the ability to bid on certain construction contracts due to prior violations of the law or terms of contract. The CTB adopted its current policy, describing the procedures and criteria it intends to use in considering the debarment of contractors, in 1981 and revised said policy in 1983. That policy is incorporated by reference as the current regulation. However, in 1982, the General Assembly enacted the Virginia Public Procurement Act which provided that a state agency designated by the Governor may adopt procedures for the debarment of contractors. In 1988, the then-Governor designated/directed, via executive order, the Department of General Services (DGS) to adopt procedures for the debarment of contractors that were to be used by state agencies. DGS has since adopted procedures for the debarment of contractors.

VDOT is proposing that the regulation therefore be repealed. VDOT will conduct a review of the debarment policy to determine if it should be amended or rescinded in light of the DGS debarment policy.

- **24 VAC 30-390 Virginia Scenic Highways and Byways**

Section 33.2-405 of the *Code of Virginia* provides that the CTB is authorized to designate any highway as a scenic highway or as a Virginia byway. Section 33.2-405 further requires that the designation be made in cooperation with the Director of the Department of Conservation and Recreation. The Department of Conservation and Recreation and VDOT executed a Memorandum of Agreement (MOA) dated July 6, 1995 that outlined the general responsibilities and obligations of each party in recommending Scenic Highways and Virginia Byways to the CTB. That MOA was updated in 2018 to provide clarity to the recommendation process.

At the same time that the CTB approved the updates to the MOA, it adopted a set of written goals and policies to guide it in making future decisions on designating Scenic Highways and Byways. The current regulation simply provides guidance to the CTB when it makes future decisions on designating Scenic Highways and Byways, and therefore is not necessary as a regulation. The purpose of the regulation can be accomplished through the written goals and policies adopted by the CTB and by the MOA with the Department of

Conservation and Recreation. Further, §33.2-405 does not call for the promulgation of regulations regarding these designations. Therefore, VDOT is recommending the regulation be repealed.

Recommendations: VDOT recommends that the Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities and the Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways be retained as is. VDOT recommends that the regulation addressing Debarment or Suspension of Contractors be repealed and that the related policy be reviewed to determine if it should be rescinded or revised, given the DGS Debarment Procedures. Finally, VDOT recommends that the regulation regarding Virginia Scenic Highways and Byways be repealed while the policy and procedures relating to designation of such roadways be retained.

Action Required by CTB: A resolution will be presented for CTB approval authorizing VDOT 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.

CTB EXHIBIT A



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-61
VAC Chapter title(s)	Rules and Regulations Governing The Transportation of Hazardous Materials Through Bridge-Tunnel Facilities
Date this document prepared	September 18, 2020

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

No acronyms are present in 24 VAC 30-61 or used in this report. There are no complex technical terms that require a definition.

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board is authorized to make regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the Code of Virginia, and that authority is extended to the Interstate highways pursuant to § 33.2-300. Federal law authorizes each state to establish, maintain, and enforce designations of specific highway routes over which hazardous material may and may not be transported by motor vehicles and limitations and requirements related to highway routing, pursuant to 49 United States Code 5112.

This regulation establishes the rules by which interstate, intrastate, and public and private transporters of hazardous materials are governed while traveling through bridge-tunnel facilities.

Alternatives to Regulation

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 or are being proposed at this time.

Public Comment

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

Commenter	Comment	Agency response

No informal advisory group was formed for purposes of assisting in the periodic review. No public comment was received as a result of the Town Hall announcement.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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 meets the criteria set out in Executive Order 14. The regulation is necessary for the protection of the public health, safety, and welfare. A hazardous material spill in a bridge-tunnel facility can be particularly difficult to clean up and can cause significant damage, especially when the facility is in an urban area or near water. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency'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 the regulation as is. The regulation provides restrictions on the transport of hazardous materials over state-owned bridge-tunnel facilities (four urban, water-proximate facilities in the Hampton Roads District, and two rural, distanced-from water facilities in the Bristol District). The Commonwealth Transportation Board believes the existing regulation is the least burdensome means for addressing the purpose of the regulation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for this regulation as it provides safety guidelines and rules for transporting hazardous materials through bridge-tunnel facilities. The Commonwealth Transportation Board has received no complaints concerning this regulation. There is no overlap, duplication, or conflict with federal or state law or regulation for 24VAC30-61. Only members of the trucking industry traveling on specific facilities are affected by this regulation, so it is limited in the number of affected parties, as well as the location of the routes. The regulation was last reviewed in 2010. [REDACTED]

CTB EXHIBIT B



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-315
VAC Chapter title(s)	Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways
Date this document prepared	September 20, 2020

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CFR means the Code of Federal Regulations.
 CTB means the Commonwealth Transportation Board.
 MUTCD means the Manual on Uniform Traffic Control Devices.
 U.S.C. mean the United States Code.

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

Section 46.2-830 of the Code of Virginia authorizes the Commissioner of Highways to classify, designate, and mark state highways and provide a uniform system of traffic control devices for such highways under the jurisdiction of the Commonwealth. It further states that such system of traffic control devices shall correlate with and, so far as possible, conform to the system adopted in other states. Federal regulation, particularly 23 CFR 655.603, requires that “The MUTCD approved by the Federal Highway Administrator is the national standard for all traffic control devices installed on any street, highway, or bicycle trail open to public travel in accordance with 23 U.S.C. 109(d) and 402(a).” The same federal regulation further states that “[w]here State or other Federal agency MUTCDs or supplements are required, they shall be in substantial conformance with the National MUTCD.” Further, 23 CFR 655.603(b)(2) provides that “States and other Federal agencies are encouraged to adopt the National MUTCD in its entirety as their official Manual on Uniform Traffic Control Devices.”

The CTB is authorized generally to make regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the Code of Virginia. According to prior guidance from the Office of the Attorney General, this regulation is exempt from the provisions of the Administrative Process Act pursuant to § 2.2-4002(B)(3) and (11) of the Code of Virginia.

Alternatives to Regulation

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 viable alternatives for achieving the purpose of this regulation were identified or considered as part of the periodic review.

Public Comment

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

No comment was received during the public comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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 Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways is necessary for the protection of public health, safety and welfare. Uniform standards for traffic control devices (signs, roadway markings, traffic signals, work zone devices, and highway/rail grade crossing devices) promote safe, orderly, and efficient use of the highways for all road users. The regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Commonwealth Transportation Board recommends retaining the regulation as is. The regulation is required by federal law and promotes the health, safety and welfare of the travelling public.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

The Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways remains needed. The CTB has received no complaints concerning the regulation, and although long and detailed, the regulation is not complex. The regulation adopts federal standards as required by federal law, and does not conflict with that federal law. The regulation was adopted in 2012 pursuant to a CTB Resolution dated December 7, 2011, and has not been amended since.

CTB EXHIBIT C



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24VAC30-340
VAC Chapter title(s)	Debarment or Suspension of Contractors
Date this document prepared	9/21/2020

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.
 CFR means the Code of Federal Regulations.
 FHWA means the Federal Highways Administration.
 U.S.C. means the United States Code.
 VDOT means the Virginia Department of Transportation.

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The CTB adopted its current policy, describing the procedures and criteria it intends to use in considering the debarment of contractors, in 1981 and revised said policy in 1983. That policy is incorporated by reference as the current regulation. However, in 1982, the General Assembly enacted the Virginia Public Procurement Act which provided that a state agency designated by the Governor may adopt procedures for the debarment of contractors. In 1988, the then-Governor designated/directed, via executive order, the Department of General Services (DGS) to adopt procedures for the debarment of contractors that were to be used by state agencies. DGS has since adopted procedures for the debarment of contractors. Section 2.2-4321 of the Code of Virginia authorizes the debarment of contractors pursuant to procedures established in writing by DGS.

For Federal-Aid projects, 23 U.S.C. 315, 2 C.F.R. 180, 2 C.F.R. Part 1200, and Federal Executive Order 12549, and FHWA Order 2000.2B, Suspension and Debarment Process, require VDOT to follow a process for determining that contractors who are suspended or debarred are excluded from participating in Federal-Aid projects. The CTB has established other rules concerning the establishment of proof of competency and responsibility of those wishing to submit bids pursuant to Chapter 43 (§ 2.2-4300 et seq.) of Title 2.2 of the Code of Virginia, known as the Virginia Public Procurement Act, which public bodies must follow in awarding public contracts.

The Office of the Attorney General has previously identified this regulation as exempt from the Administrative Process Act pursuant to § 2.2-4002(B)(2) of the Code of Virginia.

Alternatives to Regulation

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 CTB adopted its current policy, describing the procedures and criteria it intends to use in considering the debarment of contractors, in 1981. That policy is incorporated by reference as the current regulation, and has been amended several times including, most recently, in 1995. Although the policy explains the procedures and criteria the CTB intends to use in consideration of the debarment of individual contractors, the CTB is unaware of any instances in which it debarred a contractor pursuant to that policy since 1987. Debarment acts to deny contractors the ability to bid on certain construction contracts due to prior violations of the law or terms of contract. Section 2.2-4321 of the Code of Virginia, authorizing debarment, authorizes the written procedures to be adopted by DGS. The CTB believes it can achieve the same purpose of the regulation through adoption of its policy as a guidance document or by following the DGS procedures for debarment.

Public Comment

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

No public comments were received during the comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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.

Although the regulation is clearly written and easily understandable, the regulation is not necessary for the protection of public health, safety, and welfare because it merely provides guidance to the CTB in making future determinations on debarment, which ensure that VDOT does not conduct business with a person or firm that has an unsatisfactory record of integrity and business ethics. Because DGS has adopted procedures for debarment which apply to all state agencies, the CTB’s regulation is not necessary.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation)

The CTB recommends repeal of 24VAC30-340, Debarment or Suspension of Contractors. The CTB recommends further that VDOT review the current policy to ensure that it continues to satisfy requirements of Virginia law and federal rules.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

- (1) There is not a continuing need for the regulation. Because DGS has adopted procedures for debarment which apply to all state agencies, the CTB’s regulation is not necessary.
- (2) The CTB has received no complaints concerning the regulation.
- (3) The regulation is not overly complex.
- (4) The regulation is not necessary in light of the procedures for debarment adopted by DGS.
- (5) The decision to repeal the regulation will have no impact on small business given that the CTB may follow the procedures adopted by another state agency. The policy was last updated in 1995.

CTB EXHIBIT D



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-390
VAC Chapter title(s)	Virginia Scenic Highways and Byways
Date this document prepared	09/08/2020

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 (1VAC7-10), and the **Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code**.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

No acronyms are present in 24VAC30-390 or are used in this report. There are no complex technical terms that require a definition.

Legal Basis

Identify (1) the promulgating agency, 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 agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

Section 33.2-405 of the Code of Virginia states that the Commonwealth Transportation Board is authorized to designate any highway as a scenic highway or as a Virginia byway. Section 33.2-405 further requires that the designation be made in cooperation with the Director of the Department of Conservation and Recreation. Section 33.2-210 of the Code of Virginia gives the Commonwealth Transportation Board the general authority to adopt regulations for the protection of and covering traffic on and for the use of systems of state highways. The Office of the Attorney General has previously determined that the regulation is exempt from the Administrative Process Act pursuant to § 2.2-4002(B)(3).

Alternatives to Regulation

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 Department of Conservation and Recreation and the Virginia Department of Transportation executed a Memorandum of Agreement (MOA) dated July 6, 1995 that outlined the general responsibilities and obligations of each party in recommending Scenic Highways and Virginia Byways to the Commonwealth Transportation Board. That MOA was updated in 2018 to provide clarity to the recommendation process. At the same time that the Commonwealth Transportation Board approved the updates to the MOA, it adopted a set of written goals and policies to guide it in making future decisions on designating Scenic Highways and Byways. The current regulation just provides guidance to the Commonwealth Transportation Board when it makes future decisions on designating Scenic Highways and Byways, and therefore is not necessary as a regulation. The purpose of the regulation can be accomplished through the written goals and policies adopted by the Commonwealth Transportation Board and by the MOA with the Department of Conservation and Recreation.

Public Comment

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

Commenter	Comment	Agency response

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

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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.

Scenic Highways and Virginia Byways are intended to preserve highway corridors with high aesthetic or cultural values leading to or within areas of historical, natural or recreational values, and to preserve and enhance the natural beauty and cultural value of lands through which state highways traverse. More than 3500 miles of highway in the Commonwealth have received such a designation. Although the regulation is clearly written and easily understandable, it is not necessary for the protection of the public health, safety and welfare, because the purpose for which the regulation was adopted can be accomplished through other means.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Commonwealth Transportation Board is proposing that this regulation be repealed. Section 33.2-405 of the Code of Virginia says the Commonwealth Transportation Board can cooperate with the Department of Conservation and Recreation to designate Scenic Highways and Byways. The Commonwealth Transportation board adopted a policy in 1973 on making such designations and entered into a Memorandum of Agreement with the Department of Conservation and Recreation in 1995. The adopted Policy and Memorandum of Agreement were amended in 2018. The current regulation just provides guidance to the Commonwealth Transportation Board when it makes future decisions on designating Scenic Highways and Byways, and therefore is not necessary as a regulation. The purpose of the regulation can be accomplished through the written goals and policies adopted by the Commonwealth Transportation Board and by the MOA with the Department of Conservation and Recreation.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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 applicable law, will minimize the economic impact of regulations on small businesses.

Repealing this regulation does not impact small businesses. The Commonwealth Transportation Board has received no complaints concerning this regulation. The regulation is not complex, and is consistent with federal and state law. The regulation was reviewed in 2006 and again in 2018.