

# PERIODIC REGULATORY REVIEW

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# Periodic Regulatory Review—APA Requirement

- **The Administrative Process Act requires any agency that adopts regulations to periodically review those regulations, including consideration of:**
  - 1) the extent to which regulations remain supported by statutory authority/do not duplicate/overlap/conflict with state or federal law;**
  - 2) the nature of complaints/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.**

See § 2.2-4007.1 and § 2.2-4017 of the *Code of Virginia*

# Periodic Regulatory Review Process Authorities

- ❑ **The Governor's Executive Order 14:**
  - specifies the process for conducting the periodic review
  - requires that the review be performed on all regulations at least once every four years.
  
- ❑ **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.

# Periodic Regulatory Review Process

- ❑ The agency posts a notice to the public on Virginia Town Hall that it is beginning a periodic review of one or more of its regulations
- ❑ The notice is published in the next edition of the Virginia Register of Regulations
- ❑ The agency collects public comment on the regulations
- ❑ Within 120 days of the end of the public comment period, the agency must report on its review, indicating one of the following:
  - That the regulation will be retained “as is”;
  - That the regulation will be amended; or
  - That the regulation will be repealed.

# Summary of Periodic Regulatory Review for CTB Regulations

- ❑ **Thirty-three Chapters to be reviewed over three years, beginning 7/30/19:**
- ❑ **Review Schedule:**
  - **7 Chapters due 7/30/19**
  - **7 Chapters due 12/31/2019**
  - **3 (previously 6) Chapters due 6/30/2020**
  - **4 (previously 6) Chapters due 12/31/2020**
  - **8 Chapters due 6/30/2021**
  - **4 (previously 5) Chapters due 12/31/2021**
- ❑ **Process for each review period**
  - **Workshop presentation describing regulation and proposed action for each regulation (retain, repeal, or amend)**
  - **Resolution approving action and authorizing Commissioner to take all action necessary to implement approved action**

# Periodic Regulatory Review

## Five CTB Regulations to be Reviewed by December 31, 2020

<b>Chapter Number</b>	<b>Title</b>
<b>24 VAC 30-61</b>	<b>Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities</b>
<b>24 VAC 30-315</b>	<b>Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways</b>
<b>24 VAC 30-340</b>	<b>Debarment or Suspension of Contractors</b>
<b>24 VAC 30-390</b>	<b>Virginia Scenic Highways and Byways</b>

# Periodic Regulatory Review

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

- ❑ The CTB has general authority to make regulations “for the protection of and covering traffic on and for the use of systems of state highways” in § 33.2-210.
  - ❑ Federal law allows each state to designate routes over which vehicles transporting hazardous materials may travel and to impose restrictions and limitations on those vehicles.
  - ❑ Regulation creates different restrictions for rural tunnels away from water and urban tunnels near water.
- Originally adopted by the CTB in 1995. Never substantively amended; last review was in 2010.
  - Necessary for the protection of the public; written to be understandable; no negative impact on small businesses.
  - No Public Comments received
  - Recommendation: Retain As Is.

# Periodic Regulatory Review

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

- ❑ **Federal law requires states to adopt MUTCD. (23 CFR 655.603)  
Commissioner authorized to establish uniform standards for marking state highways. ( § 46.2-830)**
- ❑ **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.**
  - **Necessary for the protection of the public; written to be understandable; no negative impact on small businesses.**
  - **Regulation was adopted in 2012; has not been amended.**
  - **No Public Comments received**
  - **Recommendation: Retain as is.**



# Periodic Regulatory Review

## Debarment or Suspension of Contractors

### (24 VAC 30-340)

- ❑ **State agency designated by the Governor may adopt procedures in writing for debarment of a contractor for the contractor's unsatisfactory performance. ( § 2.2-4321)**
  - ❑ **The CTB adopted a policy on debarment of contractors in 1983. The CTB policy was adopted as a regulation in 1995.**
  - ❑ **However, by executive order another state agency has been delegated authority to adopt procedures for debarment.**
- **Statutory authority does not authorize regulation, only written procedures by a designated agency. The regulation is duplicative of the CTB policy.**
  - **Regulation was last amended in 1997.**
  - **No Public Comments received**
  - **Recommendation: Repeal regulation and likely revise policy.**

# Periodic Regulatory Review

## Virginia Scenic Highways and Byways (24 VAC 30-390)

- ❑ The CTB may, with the cooperation of the Department of Conservation and Recreation, designate a scenic highway or Virginia byway.  
( § 33.2-405)
  - ❑ The CTB adopted a policy on designating scenic highways and byways in 1973, and entered into an MOA with DCR in 1995 to agree on the criteria for such designations. The CTB policy and MOA were amended in 2018.
- Statutory authority does not require regulation, only that the CTB cooperate with DCR. The regulation is duplicative of the CTB policy.
  - No Public Comments received
  - Recommendation: Repeal regulation but retain Policy.

# Periodic Regulatory Review—Next Steps

- ❑ **CTB will be presented with a resolution in December to approve recommended actions for the four CTB regulations reviewed this review period.**
- ❑ **VDOT will post results on Town Hall**
- ❑ **Next Spring, VDOT will repeat the process for the next set of regulations to be reviewed by June 30, 2021: will present to CTB and seek approval for recommended actions and post results on Town Hall.**
- ❑ **In the ensuing months and years, CTB will be presented with results of scheduled reviews and requests to approve recommended actions.**

