



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 18, 2023

MOTION

Made By: Ms. Hynes **Seconded By:** Ms. Sellers

Action: Motion Carried, Unanimously

Title: Periodic Regulatory Review

WHEREAS, the Virginia Administrative Process Act (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 19 (issued June 30, 2022) requires all regulations to be so reviewed every four years and requires agencies to follow procedures for conducting such review as developed by the Office of Regulatory Management (ORM); 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 and ORM procedures, 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; 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, the ORM procedures, and the APA, including the completion of a Periodic Review Report of Findings for each regulation (attached as Exhibits A through C); and

WHEREAS, since no public comments were submitted for the regulations under review, 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 30-401	Change of Limited Access Control	Retain as is.
24 VAC 30-580	Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways	Retain as is.
24 VAC 30-620	Rules, Regulations, and Rates Concerning Toll and Bridge Facilities	Retain as is.

; 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* and is authorized to take action to amend, repeal, or retain said regulations.

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, including submission of all documentation, necessary to complete the periodic reviews for the regulations listed in the table above.

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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 19 (issued June 30, 2022) requires periodic reviews to take place every four years to determine if the regulation should be continued with no changes or be amended or be repealed and requires agencies to follow the procedures developed by the Office of Regulatory Management (ORM) for conducting such review. 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 19 (2022) created the Office of Regulatory Management (ORM) to, among other things, work with each regulatory agency to review all existing regulations, required once every four years, to reduce the overall regulatory burden on the public. The ORM procedures now outline the specific periodic review requirements. 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 and the ORM procedures, 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-C), which must be filed with the Virginia Registrar to complete the periodic review process.

- The regulations reviewed and which are to be considered by the CTB are listed in the table below, along with the proposed disposition of the regulation. 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 30-401	Change of Limited Access Control	Retain as is.
24 VAC 30-580	Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways	Retain as is.
24 VAC 30-620	Rules, Regulations, and Rates Concerning Toll and Bridge Facilities	Retain as is.

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

This regulation was promulgated by the CTB based on several federal and state statutory authorities, including those found in 23 USC 109 and 23 USC 111 and Sections 33.2-210 and 33.2-401 of the *Code of Virginia*. The regulation specifies the procedures by which the CTB and VDOT will change/adjust the limited access boundaries of limited access highways under certain circumstances. Adjustments take into consideration factors such as impact on traffic, changes in abutting land use, environmental impacts, and whether there is support from the locality and thus are effective in furthering safety and the purposes of limited access control. VDOT recommends retaining the regulation as is.

- **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. Section 46.2-809 also 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, with the CTB retaining this authority on primary highways. 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. The regulation sets forth limited instances when restricting through trucks from using a segment of a primary/secondary roadway will reduce potential conflicts, create a safer environment and one in accord with the current use of the roadway, while not imposing an undue burden or hardship on trucks in reaching their destinations. VDOT recommends retaining the regulation as is.

- **24 VAC 30-620 Rules, Regulations, and Rates Concerning Toll and Bridge Facilities**

This regulation was promulgated by the CTB pursuant to several state statutory authorities found in the *Code of Virginia*, including that found in § 33.2-210 regarding the CTB's general authority to adopt regulations governing the use of highways, as well as those authorities found in §§ 33.2-604, 33.2-613 and 33.2-1701 which provide that toll rates may be charged as set by law or as fixed by the CTB and which specify when tolls may not be charged. The regulation establishes the rules for collecting tolls on non-P3, VDOT-owned toll facilities and the procedures for the suspension of toll collection during emergencies, which are designed for quick and appropriate action. As such, VDOT recommends retaining the regulation as is.

Recommendations: VDOT recommends the following regulations be retained as is: Change of Limited Access Control; Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways; and Rules, Regulations, and Rates Concerning Toll and Bridge Facilities.

Action Required by CTB: A resolution will be presented for CTB approval authorizing VDOT to take all actions necessary to complete the periodic review of these regulations, including but not limited to filing the respective Periodic Review Report of Findings and any other necessary documentation for each regulation listed.

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

Options: Approve, Deny, or Defer.

Public Comments/Reactions: No public comments were received during the 21-day public comment period for the regulations noted above. The public comment period was held from July 31 – August 21, 2023.



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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)	24VAC30-401
VAC Chapter title(s)	Change of Limited Access Control
Date this document prepared	[REDACTED], 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

"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 regulation was promulgated by the CTB based on several federal and state statutory authorities, including those found in 23 USC 109 and 23 USC 111 and Sections 33.2-210 and 33.2-401 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.

This regulation specifies the procedures by which the CTB and VDOT will change/adjust the limited access boundaries of limited access highways under certain circumstances. Many of these procedures are required by current federal and state laws and regulations regarding changes of limited access control on all limited access control roadways using state and federal funds. As such, the CTB believes the present version of the regulation is the least burdensome alternative.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 is necessary for the protection of public health, safety, and welfare. 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 by which the CTB and VDOT will change/adjust the limited access boundaries of such highways under certain circumstances. Adjustments take into consideration factors such as impact on traffic, changes in abutting land use, environmental impacts and whether there is support from the locality and thus are effective in furthering safety and the purposes of limited access control. The CTB believes that 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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to retain this regulation without making any changes. The regulation continues to promote the health, safety and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system.

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 continued need for the regulation for purposes of complying with state and federal laws and regulations regarding changes of limited access control on all limited access control roadways. No complaints have been received. The regulation is not overly complex, nor does it duplicate or conflict with federal or state laws. The regulation was last amended in 2014 and the last periodic review of this regulation was conducted in 2019. The regulation does not negatively impact small businesses.



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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)	24VAC30-580
VAC Chapter title(s)	Guidelines for Considering Requests for Restricting Through Trucks on Primary and Secondary Highways
Date this document prepared	[REDACTED], 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

"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.

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 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.

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, in 2020, the CTB amended 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. Additionally, the regulation outlines the requirements for reasonable alternate routing to be provided. As such, the CTB believes the present version of the regulation is the least burdensome alternative.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to retain this regulation without making any changes. The regulation continues to promote the health, safety and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system.

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 continued need for the regulation because it provides for the protection of public health, safety, and welfare. No complaints have been received. The regulation is not overly complex, nor does it duplicate or conflict with federal or state laws. The regulation was adopted in 2003 and was amended in 2020 as a result of the last periodic review conducted. Trucking companies which are small businesses could be affected by the process provided by this regulation through the additional time and fuel necessary for a truck to drive an alternative route. Other small businesses which rely on trucks to transport and deliver goods could also be impacted if delivery times are delayed or if shipping costs increase due to the rerouting. However, the regulation requires that the termini of the proposed restriction be identical to the alternate routing to allow a time and distance comparison to be conducted, and that the alternate routing not create an undue hardship for trucks in reaching their destination. These requirements ensure that the potential economic impacts to small businesses from any restriction imposed under the regulation are considered and minimized.



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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)	24VAC30-620
VAC Chapter title(s)	Rules, Regulations and Rates Concerning Toll and Bridge Facilities
Date this document prepared	██████, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.

"P3" means facilities built pursuant to the Public Private Transportation Act.

"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.

This regulation was promulgated by the CTB pursuant to several state statutory authorities found in the Code of Virginia, including that found in § 33.2-210 regarding the CTB’s general authority to adopt regulations governing the use of highways, as well as those authorities found in §§ 33.2-604, 33.2-613 and 33.2-1701 which provide that toll rates may be charged as set by law or as fixed by the CTB and which specify when tolls may not be charged.

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 is the legal entity assigned with making policy for transportation matters in the Commonwealth and is charged with fixing toll rates. The regulation establishes the rules for collecting tolls on non-P3, VDOT-owned toll facilities and the procedures for the suspension of toll collection during emergencies, which are designed for quick and appropriate action. As such, these are the least burdensome means to regulate policy and toll rates for toll roads established and operated by the Commonwealth of Virginia.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency’s 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

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, 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 is necessary for the protection of the public health, safety, and welfare because it ensures that toll rates charged at VDOT toll facilities are fixed by a process that allows for public input, and that toll collection may be suspended during emergencies or other events where it is in the public interest to allow for free, efficient movement of vehicles through toll facilities. 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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to retain this regulation without making any changes. The regulation continues to promote the health, safety and welfare of the citizens of the Commonwealth without creating an undue hardship on any of the users of the transportation system.

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 continued need for this regulation to ensure public input can be provided during the process of fixing toll rates and to establish the process by which toll collection may be suspended during emergencies or other events where it is in the public interest to allow for free, efficient movement of vehicles through toll facilities. No complaints have been received. The regulation is not overly complex, nor does it duplicate or conflict with federal or state laws. The regulation was amended in 2021 as a result of the last periodic review in 2020. The regulation does not negatively impact small businesses.
