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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 VAC30-151
VAC Chapter title(s)	Land Use Permit Regulations
Date this document prepared	4/21/2020

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.
Department or VDOT means the Virginia Department of Transportation.
CFR means the Code of Federal Regulations.

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 promulgated the Land Use Permit Regulations

pursuant to its 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 of the *Code of Virginia*. Federal law requires states to restrict access to and use of certain highway right-of-ways, including 23 U.S.C. 111 and 23 CFR 710.203.

Additional Code sections authorize certain sections or aspects of the Land Use Permit Regulations. Section 33.2-118 authorizes the Department to issue permits for mobile food vending in certain parking areas. Section 33.2-216 requires the CTB to “establish regulations regarding size, distance from the roadway, and other safety concerns to govern the installation, maintenance, and removal of roadside memorials, plaques, and other devices placed within the right-of-way that commemorate the memory of persons killed in vehicle crashes within the right-of-way of any state highway.” Sections 33.2-240, 33.2-241, and 33.2-245 of the *Code of Virginia* authorize the Department and the CTB to regulate access to and entrances onto the state highway system. Section 33.2-1238 authorizes the Department to issue permits to allow outdoor advertising structures, in accordance with 23 U.S.C. 131. Section 46.2-1149 authorizes the Department to issue permits for use of the highways by certain oversize or overweight loaders or haulers.

Section § 2.2-1151.1 authorizes the department to issue permits for a person providing utility service solely for his own agricultural or residential use, provided that the utilities are located on property owned by the person, or (ii) the owner of a private residence or business for water or sewer service to cross the Department's right-of-way when no viable alternative exists to provide potable water or to transfer sewer effluent to a qualified drain field. Several additional sections of the *Code of Virginia* authorize the CTB and the Department to regulate the access to and use of the highway right-of-way by various Utilities, including §§ 56-458 and 56-484.28.

Additionally, federal regulations authorize or mandate regulation of the use of highway right-of-way, including 23 CFR Part 645, Subpart B (Accommodation of Utilities).

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 regulation permits work activities on the right of way for construction, utility installations, entrances, events and other activities. VDOT shall review and analyze permit applications, in order to mitigate any potential adverse impacts on state-controlled highways and to protect VDOT assets. In the interests of ensuring the safety of the traveling public, VDOT believes there are no viable alternatives to this regulation and that the current regulation is the least burdensome approach for achieving the purposes set forth by the regulation.

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 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.

All occupation of state highway right of way, including occupation by utilities and other proprietary functions of localities, is to be under the authority granted by a land use permit issued in accordance with the Virginia Department of Transportation's Land Use Permit Manual. The Land Use Permit Regulations set out the requirements that must be met in order to occupy state highway right of way. The permits address safety issues such as proper procedures for temporarily closing travel lanes, standards for entrances and access points onto highways, affixing signs and other objects to structures in the right-of-way, and location and protection of utility lines. The Land Use Permit Regulations are necessary for the protection of the public health, safety and welfare of the public travelling on or near public highways, and are 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 recommending retaining the regulation as is. The Land Use Permit Regulations are necessary for the protection of the public health, safety and welfare of the public travelling on or near public highways. In the interests of ensuring the safety of the traveling public, the CTB concurs that there are no viable alternatives to this regulation and that the current regulation is the least burdensome approach for achieving the purposes set forth by 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.

As noted above, retention of the Land Use Permit Regulations is necessary for the health, safety, and welfare of the travelling public. No comments were received concerning the regulation. The regulation is not complex, and does not overlap, duplicate or conflict with any other laws or regulations. The Land Use Permit Regulations, 24 VAC 30-151, were adopted in 2010 to replace the Highway Access Management Regulations for Principal Arterials, 24 VAC 30-150. They have been amended several times for various reasons since then, including in 2011, 2014, 2015, and 2018.
