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Exempt Action Final Regulation Agency Background Document

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| Agency name | Virginia Department of Transportation (Commonwealth Transportation Board) |
| Virginia Administrative Code (VAC) citation(s) | 24 VAC30-151 |
| Regulation title(s) | Land Use Permit Regulations |
| Action title | Amendment to Regulations to Comply with General Assembly Mandate |
| Final agency action date | July 15, 2015 |
| Date this document prepared | August 27, 2015 |

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The *Land Use Permit Regulations* (24VAC30-151) establish what uses may be allowed on right-of-way under the control of the Commonwealth Transportation Board (CTB) and the Virginia Department of Transportation (VDOT), as well as procedures for issuing permits, assessing fees, etc. The regulations are promulgated by the CTB pursuant to authority granted by § 33.2-210 of the *Code of Virginia*.

The amendments to the regulations are associated with a mandate in Chapter 466 of the 2015 Acts of Assembly (HB 2042). This bill required the Commonwealth Transportation Board to amend its regulations "so as to permit mobile food vending on state highway rights-of-way except limited access highways." Furthermore, "the regulations may provide for the issuance of permits by the Department of

Transportation to mobile food vendors authorizing such vendors to operate on state highway rights-of-way in certain business districts, urban development areas, or areas zoned for commercial use and limited to specific locations within those business districts, urban development areas, or areas zoned for commercial use where the Department of Transportation has determined that motor vehicle traffic flow and motorist and pedestrian safety on the state highway rights-of-way would not be adversely affected by the operation of the mobile food vendors.” The regulations are to be amended to “allow localities to regulate the operation of such mobile food vending businesses located on the state highway rights-of-way within the locality in a manner consistent with local ordinances and the Commonwealth Transportation Board’s regulations and policies.”

Finally, VDOT was also directed to solicit input from affected localities and other stakeholders during the process of amending the regulations. To meet this requirement, a General Notice requesting comments on the proposal was posted to the Department of Planning and Budget’s Regulatory Town Hall in April of 2015, and a corresponding notice was submitted to *The Virginia Register*.

In addition to the General Notice, VDOT solicited comments through the Virginia Association of Counties (VACO) and the Virginia Municipal League (VML). Fairfax County and the Fairfax County Chamber of Commerce were contacted directly. Comments were received from towns (Culpeper, Front Royal, Herndon), and Counties (Fairfax, Prince George), and the DC/Maryland/Virginia Food Truck Association.

Comments received included the following:

- Regulations should not apply to urban system
- Locality should have control
- Consistency with off-R/W mobile food vending
- Health and zoning considerations
- Presumption of allowing vending except in areas where it is not safe
- Do not have VDOT issue permits directly to vendors
- Preserving safety and operation of highway (including pedestrian movement) is important
- Requested addition of “towns” to language in unrelated section of Land Use Permit Regulations (24VAC30-151-40)

VDOT recommended, and the CTB approved, a decision to implement minimal changes to the *Land Use Permit Regulations* (24VAC30-151-670) by reformatting the section to designate by letters (a) and (b) the existing exceptions to prohibited uses of rights of way and adding a new exception as (c). A form has also been created to address the sale of food vending on state-owned right of way. The new exception will have the following effects:

- Grants permit authority to localities to administer food vending on state-owned right of way;
- Requires locality programs to meet existing Land Use Permit requirements and policies (preserve safety, protect the operation of highway, and limit impact on maintenance); and
- Requires that locality ordinances and requirements (health, zoning, and parking) are observed

The Office of the Attorney General (OAG) confirmed that the CTB has authority to amend this regulation by a letter dated August 26, 2015. The OAG also confirmed that this action is exempt from the Administrative Process Act through § 2.2-4006 A (4) (a).

Statement of final agency action

Please provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

At an action meeting on July 15, 2015, the Commonwealth Transportation Board approved the amendments to the *Land Use Permit Regulations* (24VAC30-151) to implement Chapter 466 of the 20`5 Acts of Assembly.

Family impact

Please assess the impact of this regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This action will have no effect on the institution of the family and family stability, nor will it affect any of the factors listed above.