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## Periodic Review Report of Findings

<b>Agency name</b>	Commonwealth Transportation Board (Virginia Department of Transportation)
<b>Virginia Administrative Code (VAC) citation</b>	24 VAC 30-200
<b>Regulation title</b>	Vegetation Control Regulations on State Rights-of-Way
<b>Date this document prepared</b>	August 6, 2019

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 (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

## Acronyms and Definitions

*Please define all acronyms used in this Report. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

"VDOT" means the Virginia Department of Transportation, the Commissioner of Highways, or a designee.  
"CTB" means the Commonwealth Transportation Board.

## Legal Basis

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

VDOT has the authority to promulgate this regulation pursuant to § 33.2-1221 (B)(3) of the *Code of Virginia*, which states in part, "[t]he Commissioner of Highways shall promulgate such regulations as he

deems necessary or desirable to carry out the provisions of this section.” The CTB originally adopted this regulation in 1991, and has amended the regulation in 1998, 2007, 2011 and 2014.

## Alternatives

*Please 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.*

VDOT is required to implement and promulgate regulations that allow VDOT to permit vegetation removal, set forth the standards for which vegetation removal shall be permissible, and analyze proposed vegetation removal applications, in order to mitigate any potential adverse impacts on the aesthetics and health of vegetation and state-controlled highways. The regulation currently stipulates that all cuttings to make outdoor advertising signs more visible from the roadway shall be limited to vegetation with trunk base diameters of less than six inches and pruning of limbs up to four inches in diameter, and all cuttings to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches and pruning of limbs up to two inches in diameter. VDOT has determined that the regulation currently treats business-related vegetation removal differently than that for outdoor advertising signs, thus treating the regulation of outdoor advertising signs and businesses unequally. VDOT has also determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting and pruning vegetation in front of businesses is too restrictive and is impractical in many cases, due to the rate of vegetation growth. Therefore, VDOT contends that the regulation should be amended to allow the equal treatment and regulation of both outdoor advertising signs and businesses.

The alternatives considered by the VDOT are as follows:

1. Amend the regulation to allow cutting and pruning in front of businesses to be consistent with that for outdoor advertising signs, by limiting cutting to vegetation with trunk base diameters of less than six inches and pruning of limbs up to four inches in diameter. This option was selected because issues have been identified that require making changes to the regulation to reduce hardships on the regulated community without sacrificing the public health, safety, and welfare of the citizens of the Commonwealth. Specifically, it was determined that this regulation currently subjects businesses to more restrictive regulation in comparison to outdoor advertising signs, thus creating an inequitable regulation.
2. Amend the regulation to stipulate that all cuttings to make outdoor advertising signs more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches, which is consistent with regulatory requirement for businesses. VDOT has determined that this is not a viable alternative, as a more restrictive regulation of outdoor advertising signs with respect to cutting and pruning would be in conflict of § 33.2-1221(B)(1)(b) of the Code of Virginia.
3. Retain the regulation without amendment. This option was not chosen, because VDOT has determined there is inequity in the regulation as to how outdoor advertising signs and businesses are regulated. VDOT has also determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting vegetation in front of businesses is too restrictive and is impractical in many cases, due to the rate of vegetation growth.
4. Repeal the regulation. This option was not selected because the regulation is still needed to protect public health, safety, and welfare, and to protect the aesthetics and health of vegetation.

## Public Comment

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

No comments were received during the public comment period.

Commenter	Comment	Agency response

## Effectiveness

*Pursuant to § 2.2-4017, please 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 regulation establishes procedures by which the outdoor advertising industry and businesses can remove vegetation to increase their visibility from a highway, in accordance with agency policies, procedures, and criteria concerning aesthetics and health of vegetation.

With that in mind, VDOT believes this regulation is necessary to protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth. VDOT also believes that the administration of this regulation intends to protect the aesthetics and health of vegetation, and ensures that all work performed on VDOT rights-of-way shall comply with the Virginia Work Area Protection Manual.

The regulation allows cutting of vegetation with up to six inches in diameter and pruning of limbs up to four inches in diameter for vegetation in front of outdoor advertising signs, but limits the cutting of vegetation in front of businesses to a maximum of two inches in diameter.

The regulation is clearly written and easily understandable.

## Decision

*Please explain the basis for the rulemaking entity's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).*

VDOT proposes to amend the regulation to allow vegetation removal in front of businesses to be consistent with that for outdoor advertising signs, by increasing the allowable diameter to six inches or less for vegetation and pruning of limbs up to four inches in diameter that can be cut to increase the visibility of businesses from the roadway. VDOT chose this alternative in order to eliminate the regulatory disparities between the outdoor advertising industry and businesses.

## Small Business Impact

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

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There is a continued need for the regulation, as it establishes procedures by which the outdoor advertising industry and businesses can remove vegetation to increase the visibility of outdoor advertising signs and businesses in accordance with agency policies, procedures, and criteria concerning aesthetics and health of vegetation. There have been no complaints received from the public to date. VDOT believes the regulation is not overly complex, and there is no overlap, duplication, or conflict with federal, state laws, or regulations.

The last full evaluation of this regulation was in 2007. Since then, there have been technical amendments to the regulation in 2011 and 2014. Through the examination of the regulation, VDOT has determined that the proposed regulatory change will minimize the economic impact of regulation on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth. VDOT contends that the proposed regulatory change will also be helpful for businesses that are subject to this regulation, as it will be less restrictive and create a more equitable regulation.