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Fast-Track Regulation Agency Background Document

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| Agency name | Commonwealth Transportation Board (Virginia Department of Transportation) |
| Virginia Administrative Code (VAC) citation | 24 VAC 30-200 |
| Regulation title | Vegetation Control Regulations on State Rights-of-Way |
| Action title | Amend |
| Date this document prepared | 12-13-2019 |

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*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

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.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. 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.

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.

The CTB adopted a resolution on December 11, 2019, in support of amending 24 VAC 30-200, Vegetation Control on State Rights of Way, to make consistent the cutting and pruning of vegetation in front of businesses and outdoor advertising signs.

Mandate and Impetus

Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

As required by Virginia Code § 2.2-4012.1, please also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track process.

Upon conducting a periodic review of the regulation, it was determined that the inconsistency between the requirements for cutting and pruning in front of businesses and in front of outdoor advertising made enforcement unequal. 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 proposed amendments will relax restrictions on vegetation control in front of businesses, allowing such businesses to be more visible from highways, while maintaining the requirements for replacing cut vegetation under a landscape plan.

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.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

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Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

In 24 VAC 30-200-20(B), the restriction on cutting vegetation in front of businesses will be amended from trunks two inches in diameter to trunks six inches in diameter, and the restriction on pruning vegetation in front of businesses will be amended from limbs two inches in diameter to limbs four inches in diameter.

Issues

Please identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

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amendments will relax restrictions on vegetation control in front of businesses, allowing such businesses to be more visible from highways, while maintaining the requirements for replacing cut vegetation under a landscape plan.

Requirements More Restrictive than Federal

Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

No requirements exceed the applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

No other agency, locality, or entity will be particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.

Impact on Other Entities

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| <p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p> | <p>Businesses along highways where vegetation is present.</p> |
| <p>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p> | <p>It is unknown at this time how many businesses will be affected by this change.</p> |

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| <p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. | <p>The cost of replacement vegetation would rise due to the larger size of vegetation cut down, but such costs are unknowable at this time.</p> |
| <p>Benefits the regulatory change is designed to produce.</p> | <p>Businesses would benefit from increased visibility from highways.</p> |

Alternatives

Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

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 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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

No alternative regulatory methods are applicable, nor were alternative regulatory methods considered.

Public Participation

If an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register; and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

Detail of Changes

Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.

If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.

If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.

For changes to existing regulation(s), please use the following chart:

| Current section number | New section number, if applicable | Current requirement | Change, intent, rationale, and likely impact of new requirements |
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| 24 VAC 30-200-20 | | All cutting to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches. No pruning of vegetation to make a business more visible from | All cutting to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than six inches. No pruning of vegetation to make a business more visible from the roadway will be permitted if the cut at the point of pruning will exceed four inches in diameter. |

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