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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

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| Agency name | Commonwealth Transportation Board |
| Virginia Administrative Code (VAC) Chapter citation(s) | 24 VAC30-620 |
| VAC Chapter title(s) | Rules, Regulations and Rates Concerning Toll and Bridge Facilities |
| Action title | Amend |
| Date this document prepared | 5/21/2020 |

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*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Commonwealth Transportation Board is considering amendments to the existing Rules, Regulations and Rates Concerning Toll and Bridge Facilities. This regulation specifies the toll rates for certain VDOT-owned and operated toll facilities. The regulation also delegates authority for the suspension of tolls at those facilities from the Commissioner of Highways to his designee, as authorized by § 33.2-613. The regulation additionally specifies the general conditions and criteria under which the suspension of tolls can occur, as authorized by § 33.2-613.

New VDOT-owned and operated toll facilities have opened, or are likely to open in the near future, that are not included in the existing regulation. Further, § 33.2-613 has been amended in recent years, changing the Commissioner of Highways' authority in the suspension of tolls on toll facilities in the Commonwealth. The amendments to the regulation are anticipated to address the additional toll facilities covered by the regulation and the change in procedures and criteria to be considered for the suspension of tolls. The amendments are not anticipated to amend existing toll rates specified in the regulation.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

VDOT means the Virginia Department of Transportation.
P3 means the Public Private Transportation Act.

Mandate and Impetus

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, or board decision). 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.”

New VDOT-owned and operated toll facilities have opened, or are likely to open in the near future, that are not included in the existing regulation. Further, § 33.2-613 has been amended in recent years, changing the Commissioner of Highways’ authority in the suspension of tolls on toll facilities in the Commonwealth. A periodic review of this regulation, completed in June 2020, identified the need for such amendments.

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 and 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 adopted the Rules, Regulations and Rates Concerning Toll and Bridge Facilities, 24 VAC 30-620, pursuant to its general authority to adopt regulations governing the use of highways in § 33.2-210, and more specific authority found in §§ 33.2-604, 33.2-613 and 33.2-1701, which say that toll rates may be charged as set by law or as fixed by the CTB and specify when tolls may not be charged.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulation is necessary for the protection of the public welfare because it ensures that toll rates charged at 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.

New VDOT-owned and operated toll facilities have opened, or are likely to open in the near future, that are not included in the existing regulation. Further, § 33.2-613 has been amended in recent years, changing the Commissioner of Highways’ authority in the suspension of tolls on toll facilities in the Commonwealth. The amendments to the regulation are anticipated to address the additional toll facilities covered by the regulation and the change in procedures and criteria to be considered for the suspension of tolls. The amendments are not anticipated to amend existing toll rates specified in the regulation.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

The regulations are anticipated to be amended to include the 64 Express lanes and the I-66 Inside the Beltway lanes. The delegations of authority to persons who are able to make determinations that conditions exist to warrant suspensions of tolls are anticipated to be amended to reflect the VDOT District Administrators for the Districts in which the respective toll facilities are located. The general conditions and criteria for the suspension of tolls must be updated to reflect the current law.

Alternatives to Regulation

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.

No viable alternatives were considered for achieving the goals of establishing rules and regulations and collecting tolls on non-P3, VDOT-owned toll facilities. The CTB is the legal entity assigned for making policy for all transportation matters in the Commonwealth, and is charged with fixing toll rates. The procedures for the suspension of toll collection during emergencies 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.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and Executive Order 14 (as amended, July 16, 2018)), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

This NOIRA is not being used to announce a periodic review or a small business impact review. A periodic review of this regulation was recently completed, and identified the need for the amendments being considered.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Commonwealth Transportation Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Steven Jack, 1401 E. Broad St., Richmond, VA, 23235, or steven.jack@vdot.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.