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Proposed Regulation Agency Background Document

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	01/21/2021

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 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.

The Commonwealth Transportation Board is proposing 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 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 do not amend existing toll rates specified in the regulation.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

VDOT means the Virginia Department of Transportation.

P3 means the Public Private Transportation Act.

U.S.C. means the United States Code.

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

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.

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 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 do not amend existing toll rates specified in the regulation.

Substance

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.

Will specify the category of facilities generally that the chapter applies to, i.e., VDOT-owned and – operated toll facilities for which there is no agreement or law authorizing another entity to establish toll rates and operate the toll facilities. Additional facilities, like the I-66 and I-64 Express Lanes, have been built or are being built since the last time this chapter was amended. Additionally, VDOT has an agreement with the Metropolitan Washington Airport Authority (MWAA) that authorizes MWAA to establish toll rates and operate toll facilities on the Dulles Toll Road. In the future, regional transportation authorities, such as HRTAC, RMTA, and NVTA, may be authorized by law to establish toll rates and operate toll facilities on highways that are otherwise owned and operated by VDOT. In order to avoid having to amend the regulations every time a facility is constructed or toll facility operation is transferred, the regulation will be amended to specify the common characteristics of facilities that the chapter applies to instead of specifying each facility by name.

Section 33.2-613 of the Code of Virginia was amended recently to allow for the temporary suspension of tolls for a mandatory evacuation during a state of emergency. Section 20 of the regulation is therefore proposed to be amended to reflect this additional condition for the temporary suspension of tolls. The provisions in existing section 30 of the regulation that address the Commissioner’s ability to delegate the assessment of risk and determination that tolls should be suspended to a designee are proposed to be moved to section 20, for consistency with the general topics of the two sections. The delegation of suspension authority is also proposed to be re-written to be more general, instead of repeating the same procedures for each individually named facility, in order to avoid having to amend the regulations every time a facility is constructed or toll facility operation is transferred.

Issues

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.

The proposed amendments are designed to reorganize the existing regulatory provisions for easier readability and to allow for additional flexibility in adding or removing toll facilities from the regulations.

Requirements More Restrictive than Federal

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.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

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.

Other State Agencies Particularly Affected

No other State agencies are affected by the proposed amendments.

Localities Particularly Affected

This regulation applies to VDOT-owned and –operated toll facilities, so no local governments are affected by the proposed amendments.

Other Entities Particularly Affected

No other entities are particularly affected by the proposed amendments.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	The proposed amendments are not associated with any projected changes in costs, savings or revenues.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	N/A
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The proposed amendments are designed to reorganize the existing regulatory provisions for

	easier readability and to allow for additional flexibility in adding or removing toll facilities from the regulations.
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Impact on Localities

Projected costs, savings, fees or revenues resulting from the regulatory change.	N/A
Benefits the regulatory change is designed to produce.	N/A

Impact on Other Entities

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.	N/A
Agency's best estimate of the number of such entities that will be affected. 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.	N/A
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: 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.	N/A
Benefits the regulatory change is designed to produce.	N/A

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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This regulation imposes no compliance or reporting requirements, design or operational standards, or other requirements on small businesses.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, 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.

This action is not being used to conduct a periodic review/small business impact review. A periodic review was conducted previously and completed on June 22, 2020.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Laurie Midkiff Doss Estates Inc.	The people are already taxed too much as it is so NO to higher toll rates.	The Commonwealth Transportation Board is not proposing to amend the toll rates established in this regulation as part of this action.

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.

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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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, Governance and Legislative Affairs Division, VDOT Central Office, 1401 E. Broad Street, Richmond, Virginia 23219 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 this stage of this regulatory action.

Detail of Changes

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
24VAC30-620-10		Lists the specific facilities by name that the chapter applies to: the Dulles Toll	Will specify the category of facilities generally that the chapter applies to, i.e., VDOT-owned and –operated toll

		<p>Road, Powhite Parkway Extension Toll Road, and the George P. Coleman Bridge.</p>	<p>facilities for which there is no agreement or law authorizing another entity to establish toll rates and operate the toll facilities. Additional facilities, like the I-66 and I-64 Express Lanes, have been built or are being built since the last time this chapter was amended. Additionally, VDOT has an agreement with the Metropolitan Washington Airport Authority (MWA) that authorizes MWA to establish toll rates and operate toll facilities on the Dulles Toll Road. In the future, regional transportation authorities, such as HRTAC, RMTA, and NVTA, may be authorized by law to establish toll rates and operate toll facilities on highways that are otherwise owned and operated by VDOT. In order to avoid having to amend the regulations every time a facility is constructed or toll facility operation is transferred, the regulation will be amended to specify the common characteristics of facilities that the chapter applies to instead of specifying each facility by name.</p>
<p>24VAC30-620-20</p>		<p>Specifies the general conditions and criteria for the temporary suspension of tolls.</p>	<p>Section 33.2-613 of the Code of Virginia was amended recently to allow for the temporary suspension of tolls for a mandatory evacuation during a state of emergency. This section 20 is therefore proposed to be amended to reflect this additional condition for the temporary suspension of tolls. The provisions in existing section 30 that address the Commissioner's ability to delegate the assessment of risk and determination that tolls should be suspended to a designee are proposed to be moved to section 20, for consistency with the general topics of the two sections. The delegation of suspension authority is also proposed to be re-written to be more general, instead of repeating the same procedures for each individually named facility, for the same reasons as the amendments in section 10 are being proposed.</p>
<p>24VAC30-620-30</p>		<p>Separately specifies the Commissioner's delegation of authority for the assessment of risk and determination that tolls should be suspended for each of the named toll facilities. Establishes toll</p>	<p>As noted above, the delegation of authority provisions are proposed to be moved to section 20. The establishment of the fixed toll rate facility toll rates are not being amended. A new subsection is being added to specify that tolls for High Occupancy Toll facilities will be charged variable toll</p>

	rates for each of the named facilities.	rates to manage demand on the facility, which is required by 23 U.S.C. 166.
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If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage