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Periodic Review and Small Business Impact Review Report of Findings

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| Agency name | Commonwealth Transportation Board |
| Virginia Administrative Code (VAC) Chapter citation(s) | 24 VAC 30-390 |
| VAC Chapter title(s) | Virginia Scenic Highways and Byways |
| Date this document prepared | 09/08/2020 |

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**.

Acronyms and Definitions

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

No acronyms are present in 24VAC30-390 or are used in this report. There are no complex technical terms that require a definition.

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 or 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.

Section 33.2-405 of the Code of Virginia states that the Commonwealth Transportation Board is authorized to designate any highway as a scenic highway or as a Virginia byway. Section 33.2-405 further requires that the designation be made in cooperation with the Director of the Department of Conservation and Recreation. Section 33.2-210 of the Code of Virginia gives the Commonwealth Transportation Board the general authority to adopt regulations for the protection of and covering traffic on and for the use of systems of state highways. The Office of the Attorney General has previously determined that the regulation is exempt from the Administrative Process Act pursuant to § 2.2-4002(B)(3).

Alternatives to Regulation

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.

The Department of Conservation and Recreation and the Virginia Department of Transportation executed a Memorandum of Agreement (MOA) dated July 6, 1995 that outlined the general responsibilities and obligations of each party in recommending Scenic Highways and Virginia Byways to the Commonwealth Transportation Board. That MOA was updated in 2018 to provide clarity to the recommendation process. At the same time that the Commonwealth Transportation Board approved the updates to the MOA, it adopted a set of written goals and policies to guide it in making future decisions on designating Scenic Highways and Byways. The current regulation just provides guidance to the Commonwealth Transportation Board when it makes future decisions on designating Scenic Highways and Byways, and therefore is not necessary as a regulation. The purpose of the regulation can be accomplished through the written goals and policies adopted by the Commonwealth Transportation Board and by the MOA with the Department of Conservation and Recreation.

Public Comment

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

| Commenter | Comment | Agency response |
|-----------|---------|-----------------|
| | | |

There were no comments received during the public comment period following the publication of the Notice of Periodic Review.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, 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.

Scenic Highways and Virginia Byways are intended to preserve highway corridors with high aesthetic or cultural values leading to or within areas of historical, natural or recreational values, and to preserve and enhance the natural beauty and cultural value of lands through which state highways traverse. More than 3500 miles of highway in the Commonwealth have received such a designation. Although the regulation is clearly written and easily understandable, it is not necessary for the protection of the public health, safety and welfare, because the purpose for which the regulation was adopted can be accomplished through other means.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Commonwealth Transportation Board is proposing that this regulation be repealed. Section 33.2-405 of the Code of Virginia says the Commonwealth Transportation Board can cooperate with the Department of Conservation and Recreation to designate Scenic Highways and Byways. The Commonwealth Transportation board adopted a policy in 1973 on making such designations and entered into a Memorandum of Agreement with the Department of Conservation and Recreation in 1995. The adopted Policy and Memorandum of Agreement were amended in 2018. The current regulation just provides guidance to the Commonwealth Transportation Board when it makes future decisions on designating Scenic Highways and Byways, and therefore is not necessary as a regulation. The purpose of the regulation can be accomplished through the written goals and policies adopted by the Commonwealth Transportation Board and by the MOA with the Department of Conservation and Recreation.

Small Business Impact

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.

Repealing this regulation does not impact small businesses. The Commonwealth Transportation Board has received no complaints concerning this regulation. The regulation is not complex, and is consistent with federal and state law. The regulation was reviewed in 2006 and again in 2018.