



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

| | |
|---|---------------------------------------|
| Agency name | Virginia Department of Transportation |
| Virginia Administrative Code (VAC) Chapter citation(s) | 24 VAC 30-500 |
| VAC Chapter title(s) | Roads in the Grounds of State Parks |
| Date this document prepared | September 3, 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.

CTB means the Commonwealth Transportation Board.
VDOT means the Virginia Department of Transportation.

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 33.2-311 of the Code of Virginia states that all highways in state parks that provide connections between highways outside such parks shall continue to be portions of the primary state highway system.

Some highways in state parks do not provide connections between highways outside of the parks, and those highways would instead be part of the secondary system of state highways.

Section 33.2-312 of the Code of Virginia states that the Commissioner of Highways may maintain all highways within the boundaries of any state park established by and under the control of the Department of Conservation and Recreation and may maintain those highways by expending funds under his control and available for expenditure upon the maintenance of highways in the secondary state highway system in the county or counties in which such state park is located. Where VDOT maintenance of a secondary highway is no longer necessary, VDOT may discontinue maintenance of such highway pursuant to § 33.2-908 of the Code of Virginia. A discontinuance usually results in maintenance responsibility being assumed by the locality in which the highway is located.

This regulation states that if the entity that controls the parks requests to be allowed to maintain the secondary highways, and the Board of Supervisors of that locality approves, the maintenance responsibility may be transferred to the entity that controls the park. The Department of Conservation and Recreation has authority to maintain highways in state parks pursuant to § 10.1-200 of the Code of Virginia.

The Office of the Attorney General has previously determined that this regulation is exempt from the APA under *Code of Virginia* § 2.2-4002 B3.

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.

Each discontinuance of a highway must be made by either the CTB or the Commissioner of Highways after following certain statutorily required procedures. The CTB adopted a policy on maintenance of secondary highways in the grounds of state parks in 1937, and the Commissioner of Highways adopted a Department Memorandum on maintenance of secondary highways in the grounds of state parks in 1991 which was consistent with the CTB's 1937 policy. The regulation consists of the Department Memorandum filed by description. The regulation is not necessary because the CTB policy and Department Memorandum serve the same purpose. Furthermore, VDOT adopted a guidance document which is posted on Townhall which describes the procedures for all discontinuances. Therefore, VDOT recommends repeal of this regulation.

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.

No comment was received during the public comment period.

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

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.

Although the regulation is clearly written and easily understandable, it is not necessary for the protection of the public health, safety and welfare. The regulation gives discretionary guidance to the CTB and Commissioner of Highways concerning future actions of the CTB or Commissioner of Highways. The purpose of the regulation therefore can be accomplished through VDOT's existing guidance document and the CTB's policy and the Commissioner of Highways' Department Memorandum on the subject.

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).

VDOT recommends repeal of the regulation because the regulation gives discretionary guidance to the CTB and Commissioner of Highways concerning future actions of the CTB or Commissioner of Highways. The purpose of the regulation therefore can be accomplished through VDOT's existing guidance document and the CTB's policy and the Commissioner of Highways' Department Memorandum on the subject.

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, because the regulation concerns the responsibility for maintenance of roads on state-owned park grounds and the purpose of the regulation can be accomplished by existing internal documents, such as a guidance document, CTB policy and Department Memorandum. Therefore, VDOT has determined that there is no continued need for the regulation. VDOT has received no complaints concerning the regulation. The regulation is not complex, and does not conflict with federal or state law. The regulation has not been amended.
