



Virginia
Regulatory
Town Hall

Periodic Review and Retention of Existing Regulations Agency Background Document

Agency Name:	Virginia Department of Transportation (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-200-10 et seq.
Regulation Title:	Vegetation Control Regulations on State Rights of Way
Action Title:	Review and Retain
Date:	September 21, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation sets forth the policies, criteria, and procedures that VDOT, on behalf of the Commonwealth Transportation Board (CTB), will follow in granting permits to allow vegetation to be removed on state property controlled by the CTB from the vicinity of outdoor advertising signs/structures and businesses.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or

discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The original basis of the *Vegetation Control Regulations on State Rights-of-Way* is the *Code of Virginia*, which provides authority for the Commonwealth Transportation Board (CTB):

- “To make rules and regulations, from time to time, not in conflict with the laws of this Commonwealth, for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same” as provided for by § 33.1-12(3); and
- “To regulate outdoor advertising in sight of public highways” in accordance with Chapter 7, Article 1, §33.1-351.

In addition to these statutes dealing with CTB authority, §33.1-371.1 directs the Commissioner to promulgate regulations that he deems necessary or desirable to carry out the provisions of the statute, which deals with selective pruning permits. (Note: the regulation (which became effective in 1991) predates this statute, which was passed in 1998.)

Specifically, the *Vegetation Control Regulations on State Rights-of-Way* establish the policies and procedures to be followed by VDOT in granting permission to permittees who wish to trim vegetation within highway rights-of-way. This activity is performed to remove vegetation that obstructs motorists’ view of signs displayed on outdoor advertising structures erected and maintained in accordance with existing state and federal laws and regulations and legitimate businesses. Through this regulation, VDOT has attempted to balance the legitimate rights of businesses to advertise their goods and services to motorists with the desire to preserve the natural beauty of roadside vegetation.

The *Vegetation Control Regulations on State Rights-of-Way* refine and extend two related regulations concerning permits: the *General Rules and Regulations of the Commonwealth Transportation Board* (24 VAC 30-20-10 et seq.) contain the stipulation that a permit be obtained for work performed on real property under CTB jurisdiction; the *Land Use Permit Manual* (24 VAC 30-150-10 et seq.) also addresses the permit process in general.

As stated above, the regulation concerns work that takes place within state-owned rights of way, in conjunction with other regulations promulgated by the CTB or the Commissioner, under the authority granted by the Code of Virginia. The CTB is exercising its authority to regulate issues concerning outdoor advertising in sight of public highways under the statutes, within the restrictions of the criteria set forth in statute, so no specific minimum requirements are exceeded. With respect to § 33.1-371.1, the statute establishes minimum requirements for the mandated regulations, as well as conditions that must be met for the issuance of the selective pruning permits. However, the Commissioner is authorized to promulgate the regulations at his

discretion to carry out the provisions of the statute, and to set other conditions for permittees to meet. These conditions generally deal with aesthetic, safety, or infrastructure concerns. Among these conditions are the following:

- Dogwoods or other small flowering trees at the site shall not be removed;
- Road and street connections and private and commercial entrances are to be kept in a satisfactory condition, and if disturbed, must be restored to VDOT's satisfaction;
- Pavement, shoulders, ditches, roadside, and drainage facilities shall be kept in operable condition; and
- Utility conflicts shall be resolved between the permittees and the utilities.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

VDOT received no public comment during the Notice of Periodic Review period, so no response was prepared. No advisory group was formed to assist in the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation's impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

Goals:

1. To permit sign or business owners to remove vegetation around signs in accordance with agency policies, procedures, and criteria concerning aesthetics and health of vegetation.
2. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
3. Is the regulation written clearly and understandably?

This regulation has no effect on the family or family stability.

Goal 1: Sign and business owners have a right to use their property for commercial purposes. In some instances, however, the characteristics of local vegetation limit the ability of these signs and businesses to be seen by motorists, which hampers their effectiveness as communications media. Therefore, this regulation was developed to allow sign owners to remove vegetation around the signs, subject to specific procedures and standards that will ensure the beauty and health of the vegetation are not compromised. The affected parties (members of the Outdoor Advertising Association of Virginia and the other business interests) were actively involved in the development of a pilot program in the 1980s that eventually led to the promulgation of the regulation. Therefore, they are satisfied with the regulation's content and how it is enforced. In 1998, § 33.1-371.1 was enacted concerning minimum requirements for selective pruning permit conditions and requirements, and the regulation was amended to include the provisions of the statute. The advertising community was also instrumental in the development of this statute, and is satisfied with its content. Therefore, VDOT and the CTB believe that this goal is being met.

Goal 2: VDOT believes that this regulation has been effective in meeting the second goal. Preserving the aesthetic appeal and diversity of plant life alongside the Commonwealth's highways is an important objective. Likewise, as discussed above, allowing some removal of vegetation by sign or business owners or their agents preserves their rights to use the signs for commercial purposes, which promotes greater economic opportunities for citizens of the Commonwealth. Environmentalists would prefer that no healthy vegetation be disturbed, and sign owners would prefer that as little vegetation as possible be present. The regulations represent a reasonable means of protecting both the environment and the use of private property. Therefore, VDOT and the CTB believe this regulation protects the public welfare, which meets this goal.

Goal 3: The regulation defines relevant terms, references nationally accepted standards used in vegetation removal, outlines restrictions concerning what vegetation may be cut, and remedies to be followed if violations occur. VDOT believes that the lack of public comment received concerning the regulation indicates general satisfaction with the format of the regulation and its clarity and ease of comprehension, which meets this goal.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

There is no alternative other than a regulation to address the underlying purpose of this regulation. The work contemplated by the regulation is governed by a permit granted by VDOT, as provided for by the *General Rules and Regulations of the Commonwealth Transportation Board* (24 VAC 30-20-10 et seq.) and the *Land Use Permit Manual* (24 VAC 30-150-10 et seq.). The *Vegetation Control Regulations on State Rights-of-Way* is a special-use regulation to address a

specific set of activities and was mandated by passage of § 33.1-371.1 of the Code of Virginia, which was enacted in 1998. The regulation was originally adopted following an assessment of the results of a pilot program in the 1980s. VDOT believes that information obtained during this pilot program allowed it to craft a regulation that addressed both the needs of environmentalists and the advertising community.

Recommendation

Please state that the agency is recommending that the regulation should stay in effect without change.

VDOT recommends that this regulation be retained without change.

Family Impact Statement

Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.

This regulation has no effect on the family or family stability, nor does it affect any of the other factors listed above. There is a beneficial effect on aesthetics that may make traveling more pleasurable for families, but its effect cannot be quantified.