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Proposed Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-200
VAC Chapter title(s)	Vegetation Control Regulations on State Rights-of-Way
Action title	Chapter 200 Regulatory Reform and Periodic Review
Date this document prepared	July 29, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Vegetation Control Regulations, 24VAC30-200, enable the Virginia Department of Transportation (VDOT) to permit vegetation removal, set forth the standards for which vegetation removal shall be permissible, and analyze proposed vegetation removal applications in order to mitigate any potential adverse impacts on the aesthetics and health of vegetation and state-controlled highways. The Commonwealth Transportation Board (CTB) has undertaken a comprehensive review of 24VAC30-200. The intent of this action is to remove redundant or obsolete language and to achieve regulatory reduction and streamlining in accordance with Governor Youngkin's Executive Order 19.

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.

“CTB” means the Commonwealth Transportation Board.

“DIBR” means Documents Incorporated by Reference.

“Department” or “VDOT” means the Virginia Department of Transportation.

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 the ORM procedures, “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.”

On June 21, 2023, the CTB approved a Notice of Intended Regulatory Action to review 24VAC30-200 to potentially amend any overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. The CTB conducted a review of its regulations in accordance with Governor Youngkin’s Executive Order 19 (EO 19). As a result of this review, the CTB identified several areas for streamlining within this regulation. The CTB approved the proposed amendments on January 16, 2024.

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.

VDOT has the authority to promulgate this regulation pursuant to § 33.2-1221(B)(3) of the Code of Virginia, which states in part, “[t]he Commissioner of Highways shall promulgate such regulations as he deems necessary or desirable to carry out the provisions of this section.” The CTB originally adopted this regulation in 1991 and amended the regulation in 1998, 2007, 2011, and 2014.

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 is intended to solve.

The proposed regulatory changes are intended to remove redundant or obsolete language, add clarity, and achieve regulatory reduction and streamlining in accordance with EO 19. Several changes will add administrative updates and bring the text in line with current practice.

Substantive amendments include removing the Documents Incorporated by Reference (DIBR) from the regulation and allowing for cutting and pruning in front of businesses to be consistent with that for outdoor advertising signs. The CTB proposes to remove the DIBR and instead reference those documents in the terms of the land use permit secured by regulated entities. These documents include standards and specifications with which regulated entities are required to comply. This change will ensure the most

relevant versions of the documents are being followed by regulated parties, more narrowly tailor requirements to the specific type of permit and associated activity, and ease burdens on permittees in determining applicability.

The CTB also proposes to amend the regulation to allow cutting and pruning in front of businesses to be consistent with that for outdoor advertising signs, by changing the limitation for cutting or pruning vegetation from vegetation with a trunk base diameter or limb diameter of 2 inches to vegetation with a trunk base diameter of less than six inches and limbs up to four inches in diameter. As a result of the periodic review conducted on this regulation in 2019, it was determined that the inconsistency between the requirements for cutting and pruning in front of businesses and outdoor advertising made enforcement inconsistent. VDOT has also determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting and pruning vegetation in front of businesses is too restrictive and impractical in many cases due to the rate of vegetation growth. The CTB approved amendments to resolve the inconsistency and pursued these changes via the fast-track regulatory process. In 2022, the fast-track process was abandoned due to the number of objections received. The CTB contends that the amendments to allow the consistent treatment and regulation of both outdoor advertising signs and businesses are still necessary, and those amendments are included in this proposal.

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.

In addition to administrative updates, eliminating redundancy, adding clarifying language, and bringing the text in line with current practice, the CTB proposes to remove the DIBR from this regulation and instead include the relevant documents in the terms of the land use permit. To ensure consistent treatment and regulation of both outdoor advertising signs and businesses, application of the restriction on cutting vegetation in front of businesses will be amended from trunks two inches in diameter to trunks six inches in diameter, and application of the restriction on pruning vegetation in front of businesses will be amended from limbs two inches in diameter to limbs four inches in diameter.

Other changes include changing the definition of "Unightly" to "Undesirable" and including invasive species and trees that pose a safety threat in the definition, removing the protection for non-native flowering trees, eliminating language on creating a picture frame effect around signs, removing the requirement for the submission of 8" x 10" glossy photographs with permit applications, and eliminating "chipped and beneficially used" verbiage to discourage leaving wood chips on site.

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 primary benefit to both the public and the CTB and VDOT of the removal of the DIBR section is improved clarity for regulated entities, ensuring they are aware of the specific documents relevant to them by including the documents in the terms of the land use permit. This change will also ensure the most updated version of each document is clearly specified for compliance. There are no disadvantages to this

proposed change, as the permit forms will be updated to correspond with this change and all permit documents are publicly available on VDOT’s website.

The inconsistency between the requirements for cutting and pruning in front of businesses and in front of outdoor advertising has made enforcement of this regulation inconsistent. VDOT has determined through surveying VDOT roadside managers that the less than two inch in diameter limitation for cutting and pruning vegetation in front of businesses is too restrictive and is impractical in many cases due to the rate of vegetation growth. The proposed amendments will relax restrictions on vegetation control in front of businesses, allowing such businesses to be more visible from highways, while maintaining the requirements for replacing cut vegetation under a landscape plan. Since replacement vegetation is required for trees that are removed, no negative impact to the environment or landscape is anticipated from these amendments.

The other proposed changes to the regulation benefit the public through removing redundant or outdated language or providing additional clarity and are not anticipated to present a disadvantage to the public or the Commonwealth.

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

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “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 particularly affected by the regulatory changes.

Localities Particularly Affected

Cities or towns where the relevant public right-of-way is within the jurisdictional limits of the city or town on a highway or street not within the jurisdiction of the Commissioner of Highways are delegated authority for activities pertaining to making billboards and business locations in those localities more visible and could see an increase in applications from businesses under the proposed amendments.

Other Entities Particularly Affected

Businesses visible from highways and entities with outdoor advertising along highways for which vegetation control operations and subsequent maintenance activities are required are affected by the proposed changes.

Economic Impact

Consistent with § 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 the proposed 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.	There are no anticipated costs, savings, fees, or revenues for VDOT resulting from the regulatory change.
<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.	There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

Projected costs, savings, fees, or revenues resulting from the regulatory change.	Cities or towns where the relevant public right-of-way is within the jurisdictional limits of the city or town on a highway or street not within the jurisdiction of the Commissioner of Highways are delegated authority for activities pertaining to making billboards and business locations in those localities more visible and could see an increase in applications from businesses under the proposed amendments. These localities are authorized to collect fees for permit applications. Assuming permit fees are sufficient to cover administrative costs, no adverse impacts are expected.
Benefits the regulatory change is designed to produce.	The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>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.</p>	<p>Businesses visible from highways and entities with outdoor advertising along highways for which vegetation control operations and subsequent maintenance activities are required are affected by the proposed changes.</p>
<p>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.</p>	<p>The number of businesses that could be affected is unknown at this time.</p>
<p>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.</p>	<p>The cost to businesses of replacement vegetation would rise due to the larger size of vegetation allowed to be cut down under the regulatory changes, but such costs are unknown at this time.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text. Businesses would also benefit from increased visibility under the proposed changes.</p>

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.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

This analysis is reported in Tables 1b and 1c on the ORM Economic Impact form.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B 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.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

The CTB/VDOT propose to remove the DIBR from the regulation and instead reference those documents in the terms of the land use permit secured by regulated entities. This will ease the burden on regulated entities, including small businesses, by more narrowly tailoring requirements to the specific type of permit and associated activity and making it easier for permittees to determine applicability of the documents.

Otherwise, no alternative regulatory methods are applicable, nor were alternative regulatory methods considered.

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 EO 19 and the ORM procedures, 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.

The proposed changes to the Vegetation Control Regulations are largely intended to reduce redundancy and improve clarity of the regulation in alignment with the criteria set out in EO 19 and the ORM procedures. The regulation allows for the protection of public health, safety, and welfare and continues to be needed. The regulation does not overlap or conflict with state or federal law or regulation, and it is not overly complex. The regulation does not negatively affect small businesses. The regulation was last reviewed in 2019. In 2022, objections were received during the fast-track regulatory process to implement the amendments to allow cutting and pruning in front of businesses to be consistent with that for outdoor advertising signs and that proposed fast-track action was withdrawn.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s 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.

No public comments were received during the public comment period following the publication of the previous stage.

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 CTB 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, email or fax to Jo Anne Maxwell, Agency Regulatory Coordinator, 1401 E. Broad St. Richmond, VA 23219, telephone (804) 786-1830, fax (804) 225-4700, JoAnne.Maxwell@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 the existing VAC Chapter(s) and the proposed regulation. If the 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
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200-10	N/A	<p>Section 10 defines the words and terms used in the regulation.</p>	<p>References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p> <p>The definitions of “Daylighting” of “Federal-aid primary highway” will be removed as they are no longer used in or relevant for the regulation.</p> <p>“Inspector” and “Local beautification project” will be amended to clarify and streamline the definitions.</p> <p>“Unightly” will be updated to “Undesirable” to clarify the qualities of a tree included in this category. Benefits of this change include the addition of invasive species and trees which pose a safety risk, which will more easily allow for these types of trees to be removed.</p>
200-20	N/A	<p>This section describes the requirements for permits; cutting, pruning, and tree removal; replacement vegetation; and violations.</p> <p>Currently, subsection B states that all cutting to make a business more visible from the roadway shall be limited to vegetation with trunk base diameters of less than two inches, and no pruning of vegetation to make a business more visible from the roadway will be permitted if the cut at the point of pruning will exceed two inches in diameter. This subsection also states, “Dogwood or other small flowering trees on the site shall not be removed.”</p>	<p>References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p> <p>In subsection B, the CTB proposes to remove the distinction between cutting related to outdoor advertising structures and that related to businesses. This will make the regulation more equitable while continuing to protect public health, safety, and welfare. “Unightly” will also be updated to “undesirable” to correspond with the changes in section 10.</p> <p>The amendments would preserve the prohibition on removing native flowering trees but remove the protection for other flowering trees. This change is due to the high frequency of encounters with flowering trees included in the Department of Conservation and Recreation’s Virginia Invasive Plant Species List.</p>

		<p>Subsection C currently requires that every effort shall be made to form a picture frame when daylighting signs and specifies how the picture frame will be achieved.</p>	<p>The CTB proposes to remove subsection C regarding creating a picture frame effect around signs as the current terminology has proven misleading for the regulated community and may result in unintended negative outcomes in which the pruning creates hard edges in a rectangular shape. This leads to irregular and improper pruning cuts/techniques that may have detrimental impacts to the tree. A picture frame effect is still required under § 33.2-1221, but the method to achieve it is not specified.</p> <p>Formatting updates will also be made.</p>
200-30	N/A	<p>This section describes the special provisions relating to permits, notification requirements, treatment of trees or other plants not covered by this chapter, and access and work requirements.</p> <p>Permittees are required to “attach two each 8” x 10” color glossy photographs (a closeup and a distant view) with the permit application showing the vegetation to be controlled, the highway, and the sign or business.”</p> <p>The first paragraph of subsection C requires that, “No trees, shrubs, vines, or plant material, except as covered by this chapter, shall be cut or disturbed. Stubs and dead wood in trees covered by this chapter must be removed, whether occasioned by present requirements or not.” This subsection also requires wood to be chipped and beneficially used or removed and disposed of.</p>	<p>References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.</p> <p>The amendments would remove the requirement that a permittee attach 8” x 10” color glossy photographs with their application. This change will allow for electronic submission of photographs.</p> <p>In subsection C, the amendments would remove the redundant first paragraph and “chipped and beneficially used or” from the third paragraph. Presently, the inclusion of “chipped and beneficially used” encourages leaving of the chips on site, which may damage turf or vegetation.</p> <p>Formatting updates will also be made.</p>
200-40	N/A	<p>This section contains the DIBR for the regulation.</p>	<p>This section will be repealed and the relevant documents incorporated within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed by</p>

			regulated parties and remove confusion as to the applicability of specific documents.
FORMS	N/A	This section contains the land use permit form relevant to vegetation control.	The form included in this section will be updated to reflect the removal of the DIBR from the regulation and the inclusion of the relevant manuals and specifications within the terms of the land use permits. This will ensure the most updated versions of the documents are being followed and ease the burden on regulated entities to determine the applicability of specific documents.

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