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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24VAC30-151
VAC Chapter title(s)	Land Use Permit Regulations
Action title	Chapter 151 Regulatory Reform and Periodic Review
Date this document prepared	June 21, 2023

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 the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Commonwealth Transportation Board (CTB) is undertaking a comprehensive review of 24VAC30-151, Land Use Permit Regulations. These regulations permit work activities on the right-of-way of state highways for construction, utility installations, entrances, events and other activities. The intent of this action is to remove redundant or obsolete language, with the goal of identifying opportunities for regulatory reduction and streamlining in accordance with Governor Youngkin's Executive Order 19.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

CTB means the Commonwealth Transportation Board.

Department or VDOT means the Virginia Department of Transportation.
CFR means the Code of Federal Regulations.
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 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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 24VAC30-151 to potentially amend any overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. The CTB is conducting a review of its regulations in accordance with Governor Youngkin's Executive Order 19.

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 promulgated the Land Use Permit Regulations pursuant to its general authority to make regulations "for the protection of and covering traffic on and for the use of systems of state highways" in § 33.2-210 of the Code of Virginia. Federal law, including 23 U.S.C. 111 and 23 CFR 710.203, requires states to restrict access to and use of certain highway rights-of-way.

Additional Code sections authorize certain sections or aspects of the Land Use Permit Regulations. Section 33.2-118 authorizes the Department to issue permits for mobile food vending in certain parking areas. Section 33.2-216 requires the CTB to "establish regulations regarding size, distance from the roadway, and other safety concerns to govern the installation, maintenance, and removal of roadside memorials, plaques, and other devices placed within the right-of-way that commemorate the memory of persons killed in vehicle crashes within the right-of-way of any state highway." Sections 33.2-240, 33.2-241, and 33.2-245 of the Code of Virginia authorize the Department and the CTB to regulate access to and entrances onto the state highway system. Section 33.2-1208 authorizes the Department to issue permits to allow outdoor advertising structures, in accordance with 23 U.S.C. 131. Section 46.2-1149 authorizes the Department to issue permits for use of the highways by certain oversize or overweight loaders or haulers.

Section 2.2-1151.1 authorizes the department to issue permits for "(i) a person providing utility service solely for his own agricultural or residential use, provided that the utilities are located on property owned by the person, or (ii) the owner of a private residence or business for water or sewer service to cross the Department's right-of-way when no viable alternative exists to provide potable water or to transfer sewer effluent to a qualified drain field." Several additional sections of the Code of Virginia authorize the CTB and the Department to regulate the access to and use of the highway right-of-way by various utilities, including §§ 56-458 and 56-484.28.

Additionally, federal regulations authorize or mandate regulation of the use of highway right-of-way, including 23 CFR Part 645, Subpart B (Accommodation of Utilities).

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

All occupation of state highway right-of-way, including occupation by utilities and other proprietary functions of localities, is to be under the authority granted by a land use permit issued in accordance with the Virginia Department of Transportation's Land Use Permit Manual. The Land Use Permit Regulations set out the requirements that must be met in order to occupy state highway right-of-way. The permits address safety issues such as proper procedures for temporarily closing travel lanes, standards for entrances and access points onto highways, affixing signs and other objects to structures in the right-of-way, and location and protection of utility lines. The Land Use Permit Regulations are necessary for the protection of the public health, safety and welfare of the public travelling on or near public highways.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

No new substantive provisions are being considered.

During its review of the regulation, the CTB is expected to consider the following topics:

1. General
 - a. Review to ensure the regulation comports with statute and applicable federal requirements.
 - b. Focus on making the regulation organized and clear.
 - c. Review for opportunities to reduce or alleviate regulatory burdens.
2. Definitions
 - a. Review definitions, revise and update where appropriate.
3. Documents Incorporated by Reference
 - a. Review use of documents and identify possible opportunities for updating or removal.
4. Forms
 - a. Review use of forms and identify possible opportunities for updating or removal.

The above list is not inclusive of all items that may be considered. Draft regulatory text is not available at this time.

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.

This regulation is necessary for the health, safety, and welfare of the travelling public. As a part of the CTB's review, alternatives to the current regulatory text will be considered. The CTB will also consider the burden on individuals and small businesses for achieving the goals set forth by the regulation.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the Code of Virginia, the CTB is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

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, and (iii) the potential impacts of the regulation.

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 the proposed stage of this regulatory action.