

PERIODIC REGULATORY REVIEW

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Periodic Regulatory Review—APA Requirement

- **The Administrative Process Act requires any agency that adopts regulations to periodically review those regulations, including consideration of:**
 - 1) the extent to which regulations remain supported by statutory authority/do not duplicate/overlap/conflict with state or federal law;**
 - 2) the nature of complaints/comments received from the public;**
 - 3) whether the regulations are necessary for the protection of public health, safety and welfare;**
 - 4) whether the regulations are clearly written and easily understandable;**
 - 5) whether the regulations' economic impacts on small businesses and families are minimized as much as possible; and**
 - 6) the length of time since the regulation has been evaluated.**

See § 2.2-4007.1 and § 2.2-4017 of the *Code of Virginia*

Periodic Regulatory Review Process Authorities

- ❑ **The Governor's Executive Order 14:**
 - specifies the process for conducting the periodic review
 - requires that the review be performed on all regulations at least once every four years.

- ❑ **Chapter 444 of the 2018 Acts of Assembly**
 - requires the Department of Planning and Budget (DPB) to track and report to the General Assembly annually which agencies are complying with the periodic review requirements.

Periodic Regulatory Review Process

- ❑ The agency posts a notice to the public on Virginia Town Hall that it is beginning a periodic review of one or more of its regulations
- ❑ The notice is published in the next edition of the Virginia Register of Regulations
- ❑ The agency collects public comment on the regulations
- ❑ Within 120 days of the end of the public comment period, the agency must report on its review, indicating one of the following:
 - That the regulation will be retained “as is”;
 - That the regulation will be amended; or
 - That the regulation will be repealed.

Summary of Periodic Regulatory Review for CTB Regulations

☐ **Thirty-four** Chapters to be reviewed over three years, beginning 7/30/19:

☐ **Review Schedule:**

- 7 Chapters due 7/30/19
- 7 Chapters due 12/31/2019
- 3 (previously 6) Chapters due 6/30/2020
- 5 (previously 6) Chapters due 12/31/2020
- 8 (previously 7) Chapters due 6/30/2021
- 4 (previously 5) Chapters due 12/31/2021

☐ **Process for each review period**

- **Workshop presentation describing regulation and proposed action for each regulation (retain, repeal, or amend)**
- **Resolution approving action and authorizing Commissioner to take all action necessary to implement approved action**

Periodic Regulatory Review

Eight CTB Regulations to be Reviewed by August 12, 2021

<u>Chapter Number</u>	<u>Title</u>
24 VAC 30-21	General Rules and Regulations of the CTB
24 VAC 30-50	Administration of Waysides and Rest Areas
24 VAC 30-100	Administration of Parking Lots and Environs
24 VAC 30-130	Prequalification and Classification of Bidders
24 VAC 30-210	Underground Utility Policy
24 VAC 30-271	Economic Development Access Fund Policy
24 VAC 30-420	Maintenance of Roads in Towns Less Than 3500
24 VAC 30-430	Maintenance of Roads Crossing the Interstates

Periodic Regulatory Review

General Rules and Regulations of the CTB

(24 VAC 30-21)

- ❑ The CTB has 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.
 - ❑ Requires land-use permits for activities that occur on highway rights-of-way under its jurisdiction, establishes rules concerning the use of highway rights-of-way and sets forth general CTB authority to regulate entrances to rights-of-way.
 - ❑ Addresses administrative rules such as submission of documents to the CTB.
- Originally adopted by the CTB in 1995. Amended in 2009 and 2011.
 - Necessary for the protection of the public; written to be understandable; no negative impact on small businesses.
 - No Public Comments received
 - Recommendation: Retain As Is.

Periodic Regulatory Review

Administration of Waysides and Rest Areas (24 VAC 30-50)

- ❑ Per § 33.2-246(E) of the *Code of Virginia*, the CTB is authorized to "establish regulations for the use of recreational waysides, including regulations relating to (i) the time, place, and manner of parking of vehicles; (ii) activities that may be conducted within such waysides; (iii) solicitation and selling within the waysides; and (iv) such other matters as may be necessary or expedient in the interest of the motoring public."
 - Policy originally adopted by the CTB in 1965. Adopted as regulation in 1995. Most recent periodic review in 2013.
 - Necessary for the protection of the public; written to be understandable; no negative impact on small businesses.
 - No Public Comments received
 - Recommendation: Retain As Is.

Periodic Regulatory Review

Administration of Parking Lots and Environs (24 VAC 30-100)

- ❑ The statutory authority for this regulation is found in *Code of Virginia* § 33.2-118 (regulation of mobile food vending in parking lots), and § 33.2-210 (providing that the CTB has authority "to make rules and regulations that are not in conflict with the laws of the Commonwealth, for the protection of and covering traffic on and for the use of systems of state highways"), and 23 U.S.C. § 111.
 - ❑ Regulation establishes overall policies, procedures, conditions under which parking lots and related environs under the control of the CTB may be used.
- Policy originally adopted by the CTB in 1974. Adopted as regulation in 1995. Most recent periodic review in 2013. Last Amended in 2018 to address mobile food vending.
 - Necessary for the protection of the public; written to be understandable; no negative impact on small businesses.
 - No Public Comments received
 - Recommendation: Retain As Is.

Periodic Regulatory Review

Prequalification and Classification of Bidders (24 VAC 30-130)

- ❑ **Section 2.2-4317 of the VPPA states that “Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors.... Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body.”**
 - ❑ **Not necessary as a regulation; policy provides guidance which can be retained as CTB Policy.**
- **Adopted as a CTB Policy in 1983. Adopted as regulation in 1993. Most recent periodic review in 2006.**
 - **Written to be understandable; no negative impact on small businesses.**
 - **No Public Comments received**
 - **Recommendation: Repeal as regulation; maintain as policy and amend in future as necessary.**

Periodic Regulatory Review Underground Utility Policy (24 VAC 30-210)

- ❑ Statute authorizing specific funding for relocating overhead utilities underground, § 33.2-348, was repealed in 2015.
 - ❑ No statutory authority for this regulation currently exists.
 - ❑ Current policy on funding such relocation is contained in the VDOT Utility Manual
- Adopted as regulation in 1993 and filed by description. Most recent periodic review in 2010.
 - Written to be understandable; no negative impact on small businesses.
 - No Public Comments received but one request for text of regulation was received and a response provided.
 - Recommendation: Repeal as regulation.

Periodic Regulatory Review

Economic Development Access Fund Policy (24 VC 30-271)

- ❑ The CTB may expend funds for constructing, reconstructing, maintaining, or improving access roads to economic development sites within localities. (33.2-1509)
- ❑ Regulation sets forth detail regarding appropriate uses of and eligibility for funding
- ❑ Legislation (SB 1253) in 2021 requires the CTB to adopt guidelines for use of such funds, with criteria based on recommendation from JLARC Study 356.
- The regulation was last amended in 2012.
- No Public Comments received
- Given the language in the legislation calling for guidelines, it appears that a regulation is not warranted; the substantive provisions and legislatively mandated criteria may be treated as a CTB Policy and/or guidance document.
- Recommendation: Repeal as regulation. Maintain guidelines as CTB Policy and/or guidance document, amending in accord with recent legislation.

Periodic Regulatory Review

Maintenance of Roads in Towns Less Than 3500 (24 VAC 30-420)

- ❑ Regulation/Policy specify that localities may choose maintenance funding under either § 33.2-339 or 33.2-340, but that once a choice is made, the locality cannot change that decision without good cause.
- ❑ Adopted as a CTB Policy and a VDOT Department Memorandum. Not necessary to have the same document as a Policy, DM and regulation.
- Written to be understandable; no negative impact on small businesses.
- CTB Policy adopted in 1951; Regulation adopted in 1994; filed by description and has not been amended. Last periodic review in 2010.
- No Public Comments received
- Recommendation: Repeal as regulation; maintain as CTB Policy and DM.

Periodic Regulatory Review

Maintenance of Roads Crossing the Interstates (24 VAC 30-430)

- ❑ Regulation/Policy specify VDOT and locality responsibilities and roles in maintenance of various types of roads crossing over or under the Interstates in various types of localities.
- ❑ Adopted as a CTB Policy and a VDOT Department Memorandum. Not necessary to have the same document as a Policy, DM and regulation.
- Written to be understandable; no negative impact on small businesses.
- CTB Policy adopted in 1961; regulation was adopted in 1994; filed by description and has not been amended. Last periodic review in 2010.
- No Public Comments received
- Recommendation: Repeal as regulation; maintain as CTB Policy and DM.

Periodic Regulatory Review—Next Steps

- ❑ CTB will be presented with a resolution in July to approve recommended actions for **the eight** CTB regulations reviewed this review period.
- ❑ VDOT will post results on Town Hall
- ❑ Next Fall, VDOT will repeat the process for the next set of regulations to be reviewed by **December 31, 2021**: will present to CTB and seek approval for recommended actions and post results on Town Hall.
- ❑ In the ensuing months and years, CTB will be presented with results of scheduled reviews and requests to approve recommended actions.

