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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	Commonwealth Transportation Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	24 VAC30-210
<b>VAC Chapter title(s)</b>	Underground Utility Policy
<b>Action title</b>	Repeal
<b>Final agency action date</b>	
<b>Date this document prepared</b>	

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, 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*.

### 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 Commonwealth Transportation Board (CTB) adopted this regulation, based on authority in § 33.2-348 of the Code of Virginia, which related to the CTB's authority to fund construction and improvement projects for the Urban System of State Highways and specifically provided limited funding for four localities relating to undergrounding utilities. The CTB also has general authority to adopt regulations "for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations" pursuant to § 33.2-210 of the Code of Virginia.

The regulation consists merely of a description of the Underground Utility Policy, describing it as a policy that establishes the conditions under which transportation funds shall be used to reimburse a portion of the additional cost involved to place overhead utility facilities underground in connection with new transportation improvement construction and states that the Policy applies to projects for the urban system of highways that are created and constructed in accordance with § 33.2-348 of the Code of Virginia. However, when § 33.2-348 was repealed, effective July 1, 2016, the specific statutory

authorized program for funding the relocation of aerial utilities underground was also repealed, effective July 1, 2016. Today, the VDOT Utility Manual addresses, among other things, undergrounding of aerial facilities and given the repeal of § 33.2-348, provides that additional costs attributable to undergrounding must be borne by the requesting localities. Therefore, the CTB is recommending that the regulation be repealed.

### **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, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "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."*

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The Commonwealth Transportation Board conducted a periodic review of this regulation, and based on that review, determined that the regulation should be repealed.

### **Statement of Final Agency Action**

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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The Commonwealth Transportation Board voted on \*\*\*\*\*, 2021 to repeal 24VAC30-210, Underground Utility Policy.