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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-210
VAC Chapter title(s)	Policy on Placing Utilities Underground
Date this document prepared	3/11/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), 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*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.

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 or 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 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. 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. However, § 33.2-348 was repealed, effective July 1, 2016.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

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 statutorily 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.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation was clearly written and easily understandable, it is no longer necessary for the protection of public health safety and welfare. Future decisions on relocation of aerial utility facilities underground in connection with highway construction or maintenance projects should be made in accordance with the VDOT Utility Manual.

Decision

Explain the basis for the promulgating agency’s decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Commonwealth Transportation Board recommends repeal of the regulation, because the statute that set forth the program which the regulation governed has been repealed.

Small Business Impact

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.

There is no continued need for the regulation.
