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## Proposed Regulation Agency Background Document

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| <b>Agency name</b>  | Virginia Department of Transportation            |
| <b>Virginia Administrative Code (VAC) Chapter citation(s)</b> | 24 VAC 30-73                                     |
| <b>VAC Chapter title(s)</b>                                   | Access Management Regulations                    |
| <b>Action title</b>   | Chapter 73 Regulatory Reform and Periodic Review |
| <b>Date this document prepared</b>                            | December 19, 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 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 Access Management Regulations, 24VAC30-73, enable the Virginia Department of Transportation (VDOT) to control access to state highways and set standards and policies for the entrances that provide this access. VDOT has undertaken a comprehensive review of these regulations. 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 July 13, 2023, VDOT approved a Notice of Intended Regulatory Action to review 24VAC30-73 to potentially amend any overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. VDOT conducted a review of its regulations in accordance with Governor Youngkin’s Executive Order 19 (EO 19). As a result of this review, VDOT identified several areas for streamlining within this regulation.

### 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’s authority to regulate entrances and manage access to highways is provided in §§ 33.2-223, 33.2-240, 33.2-241, 33.2-242, and 33.2-245 of the Code of Virginia.

### 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. Along with administrative updates and bringing the text in line with current practice, VDOT 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.

As described in the Code of Virginia sections referenced above, the Commissioner of Highways is required to control access to state highways and set standards and policies for the entrances that provide this access. VDOT shall review and analyze proposed entrance applications in order to mitigate any

potential adverse impacts on state-controlled highways, to protect VDOT assets, and to preserve public safety.

Each proposed highway entrance creates a potential conflict point that impacts the safe and efficient flow of traffic on the highway; therefore, private property interests in access to the highway must be balanced with public interests of safety and mobility. Managing access to highways can reduce traffic congestion, help maintain the levels of service, enhance public safety by decreasing traffic conflict points, support economic development by promoting the efficient movement of people and goods, reduce the need for new highways and road widening by improving the performance of existing highways, preserve the public investment in new highways by maximizing their efficient operation, and better coordinate transportation and land use decisions. It is essential that entrance and site design allow safe and efficient movements of traffic using the entrance while minimizing the impact of such movements on the operation of the systems of state highways. As such, the Access Management Regulations are necessary for the protection of public health, safety, and welfare.

### **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.*

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In addition to administrative updates, eliminating redundancy, adding clarifying language, and bringing the text in line with current practice, VDOT proposes to remove the DIBR from this regulation. This will eliminate confusion over which documents each regulated entity is required to follow and ensure the correct versions of the relevant documents are specified at any given time. The relevant documents will instead be included in the terms of the land use permit.

### **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.*

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The primary benefit to both the public 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 them in the terms of the land use permit. This change will also ensure that 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 other proposed changes to the regulation benefit the public through removing redundant or outdated language and providing clarity as to current VDOT practice 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.*

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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

Localities are not particularly affected by the regulatory changes.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory 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**

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| <p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:<br/> a) fund source / fund detail;<br/> b) delineation of one-time versus on-going expenditures; and<br/> c) whether any costs or revenue loss can be absorbed within existing resources.</p> | <p>There are no anticipated costs, savings, fees, or revenues for VDOT resulting from the regulatory change.</p>                  |
| <p><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.</p>   | <p>There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.</p> |
| <p><i>For all agencies:</i> 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.</p>                   |

**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.*

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| Projected costs, savings, fees, or revenues resulting from the regulatory change. | There are no anticipated costs, savings, fees, or revenues for localities resulting from this regulatory action. |
| 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.*

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| 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.   | No other entities are expected to be affected by the proposed changes.                                   |
| 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:<br>a) is independently owned and operated, and;<br>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.   | N/A  |
| 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:<br>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;<br>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;<br>c) fees;<br>d) purchases of equipment or services; and<br>e) time required to comply with the requirements. | N/A  |
| Benefits the regulatory change is designed to produce.  | The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text. |

**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.*

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*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 proposed regulatory changes were identified during a review conducted in accordance with the principles of EO 19. The focus of the review was to reduce overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. As such, no alternatives to the proposed changes were identified.

### **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.*

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*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.*

VDOT proposes 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.*

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The proposed changes to the Access Management Regulations are 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 enables VDOT to protect the public health, safety, and welfare through the management of access to highways and continues to be necessary. The regulation was last reviewed in 2020 and no complaints have been received. 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.

**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.*

| Commenter | Comment | Agency response |
|-----------|---------|-----------------|
|           |         |                 |
|           |         |                 |

**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.*

VDOT 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](mailto: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   |
|--------------------------------|---|---|--|
| 73-10                          | N/A                                       | Section 10 defines the words and terms used in the regulation.  | <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 “functional area of an intersection” and “trip” will be removed. They have been identified as redundant or no longer relevant.</p> <p>The definition of “turn lane” will be modified to include information about vehicle storage to align the definition with current practice, and the definition of “limited access highway” will be streamlined.</p> |
| 73-20                          | N/A                                       | This section outlines the authority of VDOT and the CTB related to access management.   | VDOT proposes to remove the last sentence of subsection A to streamline the regulation and eliminate unnecessary text.   |
| 73-30                          | N/A                                       | This section includes information on the application of the regulation to principal arterials, minor arterials, collectors, and local streets and the availability of maps to facilitate identification of highways by their functional classification. | This text of this section will be simplified to state that the regulation applies to any highway that is a part of the systems of state highways. The inclusion of different functional classifications was needed when the regulation was phased in upon initial adoption, but the simplified verbiage is now more appropriate. The requirement for the Commissioner to publish maps of functional classifications is no longer necessary in this regulation because the regulation now states that it applies to all highways in the state system.   |
| 73-50                          | N/A                                       | Section 50 describes the appeal and exemption procedure and the associated requirements.  | 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  |



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|        |     |  | regulated entities to determine the applicability of specific documents.  |
| 73-60  | N/A | This section describes general requirements for entrances and the type of access that will be permitted by VDOT.         | VDOT proposes to replace the last sentence of subsection A with a new sentence clarifying potential remedies available to VDOT for the construction of unpermitted entrances.   |
| 73-70  | N/A | This section describes the requirements for commercial entrance design.  | 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.<br><br>Subsection A(5) will be removed to streamline the regulation as the intent of the text is restated in subsection B(1).<br><br>Subsection A(7) will also be removed as median crossover work is entirely within the right-of-way and subject to land use permit conditions, which will include the referenced DIBR moving forward. |
| 73-80  | N/A | Section 80 includes details on minimum sight distance requirements for commercial entrances.                             | 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.  |
| 73-90  | N/A | Section 90 includes details on private entrances and describes the responsibilities of both the property owner and VDOT. | 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.<br><br>The proposed amendments will add clarity to subsection E regarding VDOT's maintenance responsibilities, particularly regarding the cleaning and replacement of drainage pipes. This is intended to resolve potential confusion for property owners regarding VDOT's responsibilities.   |
| 73-120 | N/A | This section outlines the access management  | References to specific DIBR will be removed to reflect the inclusion of the relevant manuals and specifications   |

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|        |     | requirements for commercial entrances.  | 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.<br><br>The amendments also remove a duplicative sentence referencing the appeal process described in section 50, which will help streamline the regulation. |
| 73-150 | N/A | This section contains requirements for temporary construction or logging entrances.   | The last sentence of subsection A as well as subsections B and C will be removed as they restate requirements in 24VAC30-151, the Land Use Permit Regulations, helping to streamline the regulation.   |
| 73-160 | N/A | This section outlines the conditions for VDOT to grant use of portions of highway right-of-way for access to public waters. | The reference to the Department of Game and Inland Fisheries will be updated to the Department of Wildlife Resources.  |
| FORMS  | N/A | This section contains the land use permit forms relevant to access management.  | These forms 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 by regulated parties and remove confusion as to the applicability of specific documents.                    |
| DIBR   | N/A | This section contains the Documents Incorporated by Reference for the regulation.   | 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 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 |
|----------------------------------|---|--------------------------------------|---|
|                                  |   |                                      |   |
|                                  |   |                                      |   |