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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 VAC 30-325
VAC Chapter title(s)	Urban Maintenance and Construction Policy
Date this document prepared	10/25/2022

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*.

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.

There are no acronyms or any technical terms that are used in this document to be defined.

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.

This regulation was promulgated by the Commonwealth Transportation Board (CTB) and provides internal and external instructions in the administration of maintenance and construction payments for qualifying cities and towns, including clarifying satisfactory design standards and lane mileage eligibility.

The CTB is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the *Code of Virginia*, and is specifically authorized to approve payments for maintenance, construction, or reconstruction of highways to all cities and towns eligible for funds under § 33.2-319 of the *Code of Virginia*. Such payments, however, shall only be made if those highways functionally classified as principal and minor arterial roads are maintained to a standard satisfactory to the Virginia Department of Transportation (VDOT).

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.

At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency's 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
Anonymous	As the governor's office desires to remove unnecessary regulation, I propose that 24VAC30-325-10 A. 3 be modified to better match 24VAC30-325-10 B. 4 , where the former requires 16 feet of constructed way with 40 feet of ROW while the latter only deems 14 feet necessary when calculating lane mileage. Adjusting 24VAC30-325-10 A. 3 to 14 feet (and analyzing if 40 feet of ROW is necessary) would lower costs by requiring a smaller amount of constructed product and reduce the confusion of mentioning multiple widths.	<p>This regulation should be read in the context of § 33.2-319 of the <i>Code of Virginia</i>. Section 33.2-319 B specifies nine types/configurations of highways in cities and towns that can be eligible for urban maintenance payments. Section 33.2-319 B also states that the "Commissioner of Highways may waive the requirements as to hard-surface pavement or right-of-way width for highways where the width modification is at the request of the governing body of the locality and is to protect the quality of the affected locality's drinking water supply or, for highways constructed on or after July 1, 1994, to accommodate some other special circumstance where such action would not compromise the health, safety, or welfare of the public. The modification is subject to such conditions as the Commissioner of Highways may prescribe."</p> <p>24 VAC 30-325-10-B-4 is intended to address the type/configuration of highway in § 33.2-319 B (iv), which states: "...(iv) either (a) has been paved and has constituted part</p>

		<p>of the primary or secondary state highway system prior to annexation or incorporation...”.</p> <p>So, if an older highway in the state system of highways is annexed into a city/town that is eligible to receive urban maintenance payments, and that highway is a two lane highway with a paved width of 14 feet (which would typically occur in more rural counties), then the city/town that annexed the highway may still be eligible to receive urban maintenance payments for that highway, but VDOT will make such payments as though the highway were one lane, not two.</p> <p>But for that one exception, 24 VAC 30-325-10-A-3 provides that any local one way streets, loop roads, school bus entrances, service roads and frontage roads may be eligible for receiving urban maintenance payments, but only if they have a paved width of at least 16 feet and a right-of-way width of at least 40 feet. Note that none of the configurations in § 33.2-319 specify that combination of 16 ft./40 ft. So this would likely count as a waiver of the width requirements due to those types of highways being special circumstances.</p>
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Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of the public health, safety, and welfare as it specifies the appropriate design standards to which urban highways should be constructed and maintained in order for the cities and towns in which those urban highways are located to be eligible for certain state funds. The design standards ensure the safety of the public and facilitate the efficient movement of people and commercial goods on those highways. The regulation is clearly written and easily understandable.

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).

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to amend this regulation. The allocation of funding for urban construction has changed since the regulation was last amended, and amendments are now needed to conform the regulation with current requirements.

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 a continued need for this regulation because it provides certain details and conditions in order for urban streets to be eligible for maintenance payments as well as conditions for lane mile eligibility and calculations and further provides internal and external instructions in the administration of maintenance and construction payments for qualifying cities and towns. There was one comment received during the public comment period for the periodic review, and the comment and response can be found in the "Public Comment" section above.

There have been no amendments to the regulation since it was last reviewed in 2019. The regulation is not overly complex. There is no overlap, duplication, or conflict with federal or state law or regulation. The regulation does not impact small businesses, other than by promoting the efficient movement of people and commercial goods on urban highways.

The regulation needs to be updated to reflect the elimination of formula funds, notably the urban construction allocation to localities referenced in the regulation. Chapter 684 of the 2015 Acts of Assembly amended § 33.2-358 of the Code of Virginia by changing the previous construction formula distribution – 40% to the primary system, 30% to the secondary system, and 30% to the urban system – to the current process which no longer utilizes an urban construction allocation. This change to the distribution formula applied to funds allocated for fiscal years beginning on and after July 1, 2020. Further, § 33.2-362 of the Code of Virginia, which outlined the allocation of construction funds for urban system highways, was repealed by Chapter 684 of the 2015 Acts of Assembly. The current programs for funding projects in the urban system of highways are outlined in Chapter 3.4 of the Urban Construction and Maintenance Manual. This Manual, adopted by VDOT, can be found by the public on Virginia's Regulatory Town Hall (www.townhall.virginia.gov) under VDOT's Guidance Documents and on the VDOT website (www.virginiadot.org) on the Local Assistance Division's Urban Highways page.