



Virginia
Regulatory
Town Hall

Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Virginia Department of Transportation
VAC Chapter Number:	121
Regulation Title:	Roadside Management Program Regulations
Action Title:	Fast-Track/Full-Scale Promulgation of Legislative Mandate
Date:	June 8, 2004

This information is required prior to the submission to the Registrar of Regulations of a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B). Please refer to Executive Order Twenty-Five (98) and Executive Order Fifty-Eight (99) for more information.

Purpose

Please describe the subject matter and intent of the planned regulation. This description should include a brief explanation of the need for and the goals of the new or amended regulation.

This regulation is being developed to comply with §33.1-223.2:9 of the Code of Virginia passed by the 2004 session of the Virginia General Assembly (SB 260/Chapter 679). The regulation sets forth the requirements applicable to all individuals, community groups, or local governments that wish to landscape portions of highway rights-of-way. These regulations include procedures for approval and criteria used to evaluate each proposal.

The roadside management regulation creates a new program. Therefore, VDOT is exploring alternatives to make the regulation as useful as possible for individuals, community groups, or local governments in meeting the goals of ensuring a safe and aesthetically pleasing environment. These alternatives are intended to improve the current situation of no guidance while meeting the principal goals of:

- establishing the minimum criteria for the planning, review, and approval of local beautification initiatives.

- protecting the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens of the Commonwealth.
- providing a clearly written and understandable regulation.

In order to promptly make this program available to communities, following the conclusion of the NOIRA stage, which concludes on July 28, 2004, VDOT plans to promulgate this regulation by using the fast-track rulemaking process pursuant to § 2.2-4012.1 of the Administrative Process Act. Using this method, a proposed regulation may become effective about 75 days after its publication in the Virginia Register, unless objected to by 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules. If objected to, VDOT intends to proceed with this rulemaking under the normal APA (Article 2) promulgation process. Although not required by the fast-track process, VDOT will hold a public hearing on Monday, July 26, 2004, in the Old Highway Building auditorium at 1221 East Broad Street in Richmond from 1:00 p.m. to 4:00 p.m. to collect additional comment prior to completing the proposed regulation.

Basis

Please identify the state and/or federal source of legal authority to promulgate the contemplated regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. The correlation between the proposed regulatory action and the legal authority identified above should be explained. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided.

These regulations are being promulgated under authority granted by §33.1-223.2:9 of the Code of Virginia. No federal statutes pertain to the landscape installation or maintenance sections of this regulation. 23 U. S. C. §131 regulates the placement of signs visible from federal-aid highways. Title 33.1, Chapter 7, Article 1, §33.1-351 *et seq.* of the Code of Virginia and 24 VAC 30-120-10 *et seq.* (*Rules And Regulations Controlling Outdoor Advertising and Directional and Other Signs And Notices*) regulates the placement of signs visible from public highways in the Commonwealth. Title 33.1, Chapter 7, Article 1, §§33.1-371.1 and 33.1-371.2 and 24 VAC 30-200-10 *et seq.* (*Vegetation Control Regulations On State Rights-Of-Way*) regulate tree trimming and removal within state rights-of-way.

VDOT, the Commissioner and the Commonwealth Transportation Board (CTB) are granted "control, supervision, management, and jurisdiction" over the system of state highways by § 33.1-69. Furthermore, the CTB has general authority to make regulations concerning the use of the state highway system pursuant to § 33.1-12 (3), and has exercised that authority through the regulations referenced above. Finally, persons desiring to perform work within highway rights-of-way must obtain permits from VDOT pursuant to § 33.1-198.

This regulation does not exceed the specific minimum requirements of any federal or state mandate. However, discretionary authority is granted by §33.1-223.2:9 of the Code of Virginia during the development of the "comprehensive roadside management program" for VDOT to

address new program initiatives, as well as current programs or items not currently addressed in law, such as program participation by businesses, civic groups, or others.

Statutory text for the Code of Virginia sections referenced above can be accessed via the following website:

<http://leg1.state.va.us/000/src.htm>

SB 260/Chapter 679 can be accessed via the following website:

<http://leg1.state.va.us/lis.htm>

Substance

Please detail any changes that would be implemented: this discussion should include a summary of the proposed regulatory action where a new regulation is being promulgated; where existing provisions of a regulation are being amended, the statement should explain how the existing regulation will be changed. The statement should set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens. In addition, a statement delineating any potential issues that may need to be addressed as the regulation is developed shall be supplied.

Currently, VDOT proposes the following regulatory format and scope:

- draft text that describes an understandable, comprehensive and useful roadside management program;
- identify titles and work unit names;
- include list of documents incorporated by reference; and
- address impact of VDOT and program participant technical issues (definition of roles, flexibility of standards, acknowledgement, , maintenance responsibilities within VDOT rights-of-way, etc.) on the regulated parties.

VDOT will also collect input from stakeholders (including an advisory committee comprised of individuals knowledgeable about tourism and landscaping issues, as well as local government representatives) and the public during the preparation of the regulation, and will evaluate any issues raised at the July, 2004, preliminary public hearing or during the NOIRA comment period prior to adoption of the final regulation. These issues could be related to the technical points listed above, or other unanticipated issues could arise during the promulgation process.

VDOT believes that the regulation is essential to maintain the integrity of the State Highway System by creating a convenient, safe, and cost-effective process for individuals, community groups, local governments, and others to improve the roadside aesthetics within their communities. The regulation will allow local governments and private entities to develop aesthetically pleasing sections of rights-of-way on public tracts of land that complement existing

and future road systems, traffic patterns, and land use. Providing an adequate transportation system is one of the most important functions of government in providing for the safety and welfare of citizens. Within the Commonwealth, public highways continue to play the principal role in this function. The aesthetic character of the roadside plays an important role in the safety of the motoring public and the economic well-being of the local community.

Today, ever-increasing competition between states for new economic development dictates that Virginia continue to provide an efficient and attractive highway system. Furthermore, to promote improved quality of life for the citizens, the effective movement of people, goods, and services on our highways is essential. Additionally, providing a safe, adequate and aesthetically pleasing travel experience is an essential quality of life element that Virginians expect and demand. These principles apply to both existing, as well as new streets and roads.

Accordingly, it is imperative that any new transportation facility be designed and constructed to adequately and safely accommodate aesthetic features, consistent with the land use served and as requested by local government. Since the projected resources of the Transportation Trust Fund would normally not be used to finance significant landscape improvements to state rights of way adjacent to existing transportation facilities, this regulation is being established under legislative mandate to allow non-state funding to meet the anticipated transportation beautification needs of the community at large.

Alternatives

Please describe, to the extent known, the specific alternatives to the proposal that have been considered or will be considered to meet the essential purpose of the action.

There is currently no program addressing individual, community group, or local government beautification initiatives. These groups have responded to the lack of guidance by haphazardly developing individual programs or merely placing landscape materials within highway rights-of-way. This approach can be unsafe and/or have inconsistent results. The Virginia General Assembly recognized the need for a comprehensive program to allow individuals, community groups, or local governments to beautify their entryways and major highway corridors for community pride, economic development, and tourism.

VDOT concurs with the General Assembly's decision that there is no viable alternative to having a regulation governing the placement of landscape materials within the right-of-way, thereby ensuring the integrity and safety of the existing systems of highways and roads and guiding the prudent decisions deemed necessary to protect against the haphazard placement of plant material.

Family Impact Statement

Please provide a preliminary analysis of the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for

oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There is no negative impact to the factors listed.