



Virginia Department of Planning and Budget **Economic Impact Analysis**

24 VAC 30-73 Access Management Regulations
Department of Transportation
Town Hall Action/Stage: 6279 / 10216
March 27, 2024

The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of the potential economic impacts as of the date of this analysis.¹

Summary of the Proposed Amendments to Regulation

Pursuant to Governor Youngkin's Executive Order 19² (EO 19), the Department of Transportation (VDOT) proposes to eliminate regulatory requirements by removing documents incorporated by reference (DIBR) and instead referencing those documents in the terms of the land use permit applications. The proposed action would also remove redundant or obsolete language.

Background

This regulation enables VDOT to control access to state highways and set standards and policies for the entrances that provide this access. According to VDOT, 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

¹ Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

² <https://www.governor.virginia.gov/media/governorvirginiagov/governor-of-virginia/pdf/eo/EO-19-Development-and-Review-of-State-Agency-Regulations.pdf>

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. In short, the entrance and site design must 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.

In response to EO 19 and after undertaking a comprehensive review of this regulation, VDOT is proposing changes to the requirements in the regulation. This would primarily be done by removing DIBRs and instead referencing those documents in the terms of the land use permits that regulated entities must obtain before initiating a project that may affect highway access. Currently, the regulation includes eight DIBRs. When an agency adds a DIBR to a regulation, “The material in the document becomes the text of the regulation and an enforceable part of the regulation” (1 VAC 7-10-140). Thus, removing the DIBRs removes all the requirements therein, just as if the requirements had been stated in the body of the regulation. These DIBRs, which contain the entrance and site design standards, are:

- *VDOT Road Design Manual, 2011,*
- *VDOT Road and Bridge Specifications, 2007, revised 2011,*
- *VDOT Road and Bridge Standards, 2008, revised 2011,*
- *Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), 2003, revised 2007, Federal Highway Administration, Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954.7,*
- *VDOT Policy for Integrating Bicycle and Pedestrian Accommodations, 2004,*
- *Highway Capacity Manual (HCM), 2010, Transportation Research Board, 500 Fifth Street, NW, Washington, DC 20001,*
- *VDOT Instructional and Informational Memorandum IIM-LD-227.5, 2011,*
- *Trip Generation, 8th Edition, 2008, Institute of Transportation Engineers, 1099 14th Street, N.W., Suite 300 West, Washington, DC 20005,*
- *Instructional and Informational Memorandum IIM LD-227.5, 2011 (VDOT)³.*

³ Not listed as a DIBR, but currently referenced in the regulation and would be removed from the text.

The current regulation also includes the following forms:

- *LUP-A - Land Use Permit Application (rev. 03/10),*
- *LUP-SP - Land Use Permit Special Provisions (Notice of Permittee Liability) (rev. 12/10),*
- *LUP-CSB - Corporate Surety Bond (rev. 03/10),*
- *LUP-LC - Letter of Credit Bank Agreement (rev. 03/10),*
- *LUP-SB - Land Use Permit Surety Bond (rev. 03/10).*

The LUP-A (Land Use Permit Application) is a relatively short (one page) form. It requires compliance in part “*with the rules and regulations of the Commonwealth Transportation Board of Virginia*”; “*any agreement between the parties*”; contains language that applicant assumes any cost responsibilities covering work under the permit; that applicant will maintain work as approved; that applicant is responsible for any damages; that Commonwealth is indemnified from damages, etc. The LUP-A also contains contact information for the applicant; surety information; proof of attestation that the utility company is registered with the appropriate notification center and that a notarized affidavit is attached stating that entities with property interests in adjacent properties are notified that a permit application has been made; description of the activity for the permit is sought “as per attached plans” with detailed geographic location information; if applicable, the consent to full salary and expenses of a state inspector in conjunction with the project; and signature of the applicant and the agent.

Notably, the LUP-A does not contain any references to any of the DIBRs in and of itself. However, it requires a description of the planned activity(s) “as per attached plans.” According to VDOT, those attached plans depicting the proposed entrance are drawn by a professional engineer (PE) on behalf of the applicant. The PE submitting the plans must have the required engineering knowledge pursuant to DPOR regulations (18 VAC 10-20-730). These engineering plans would also include text that references the portions of the entrance and site design standards that would apply. Thus, because each project and the accompanying plans will vary, it is the PE’s responsibility to identify which of the standards in numerous DIBRs or portions thereof are specifically applicable to the proposed activity(s) and ensure that the plans are drawn in compliance with those standards.

In contrast to this current approach, VDOT is proposing in this action to strike the references to all of the DIBRs and forms currently in the regulatory text, and instead add two new forms, which are *Land Use Permit Application for Commercial Entrance Installation-(LUP-CEI)* (rev. 3/2024) and *Land Use Permit Application for Private Entrance-(LUP-PE)* (rev. 3/2024).⁴ These two forms would serve as the new permit application for commercial or private entrance installations.

Generally speaking, the new forms are much lengthier (each over 10 pages) and appear to contain all the content that the current forms have, but also include additional information. The additional information on these forms includes relevant references to VDOT's authority in regulations and the Code of Virginia, application requirements, permit fees and charges, surety requirements and refunds, insurance requirements, and the requirements for the commercial or private entrances.

The main difference between the current and the proposed regulation lies in how each one references the entrance and site design requirements for private and commercial projects. The entrance requirements in the new forms specifically identify the document and portions thereof that contain the relevant design standards for each type of activity(s), such as provisions relating to drainage, curbs, pavement, signs relating to turns, accommodation of pedestrian and bicycle facilities, work protection and entrance spacing, etc. In other words, instead of including the entrance and site design standards in the regulatory text in the form of eight DIBRs, the relevant portions of each document (those that apply to every permit) are referenced in the new forms.

In summary, the proposed action would remove all of the existing DIBRs and forms from the regulation and instead add two new forms: one for private entrances and the other for commercial entrances. Those two forms would contain generally the same information the current form contains but would also add more detailed information particularly identifying the documents and portions thereof where the specific design standards applicable to the proposed activity(s) in each type of permit is located.

⁴ <https://www.vdot.virginia.gov/doing-business/technical-guidance-and-support/land-use-and-development/land-use-permits/>

Estimated Benefits and Costs

Under the proposed changes, it appears there would be more clarity on which entrance and site design standards are applicable to the type of activity(s) being proposed. According to VDOT, the current approach of including the standards and specifications in the regulations as DIBR leads to an overly broad application and thus potential confusion for applicants, as only specific parts of the documents apply to different types of permits. Under the proposal, the terms and conditions of the permit would be more narrowly tailored to incorporate those requirements that relate directly to the activity(s) for which the permit is granted (e.g., it is unnecessary to include utility relocation requirements for a permit authorizing a bike race).

The added clarity may reduce uncertainty and consequently benefit the applicants. Under the current approach, an applicant's PE is responsible for identifying every DIBR and the portions thereof where the applicable design standards are located. As a result, a PE who is not very familiar with the DIBRs would have to spend time to identify the relevant standards, and if this is not done accurately the PE may unknowingly submit a non-compliant permit application only to be rejected by VDOT. In this scenario, the PE's time and effort to prepare the permit application and VDOT's time and effort to review it would be wasted, and the project may be delayed. Added clarity may help avoid possible situations such as this. Thus, the proposal may reduce the burden on the permittee of ascertaining/identifying the requirements that must actually be followed and help avoid costs from potential mistakes.

Also, VDOT asserts that the safety and effectiveness of the highway system and travel would be maintained and not negatively impacted because the appropriate standards would still apply to the permitted activity and VDOT would be able to enforce the terms and conditions of the permit because it functions as a contract. VDOT's ability to take these steps appears to be enhanced through new language added to the regulation, which states that "VDOT may take any action within the right-of-way to block, obstruct or remove an unpermitted entrance and may initiate civil action for damages, injunction or other appropriate remedy." Accordingly, any violation of the terms of a given permit can be addressed contractually, and will not rely upon administrative remedies pursuant to the Virginia Administrative Process Act (APA).

With respect to the potential impact of any enforcement actions that may be taken regarding violations of the design standards, VDOT reports that it is not aware that any previous

administrative hearings have been held pursuant to the APA. VDOT has had land use permit violations, and at least one hearing in the last six years, but that case “involved someone trying to do an activity illegal under state law.” Similarly, VDOT is not aware of any civil enforcement actions that have been taken against permittees in a court of law, although the new enforcement language noted above may allow for such actions in the future. However, VDOT states that notwithstanding the removal of the DIBRs as regulatory requirements, it can continue to enforce the design standards through the regulations through the terms of the forms by using the “built according to approved design” requirement. Thus, it is not clear if there would be any economic effects from anticipated enforcement of the terms and conditions of the permit primarily through its functioning as a contract instead of as a regulatory mechanism.

In practice, it does not appear the proposed change will have a significant economic impact. Regarding the differences between the design standards that are currently treated as DIBRs and the versions of the same documents that would be used under the proposed approach, VDOT states that there are some differences, but they are relatively minor. VDOT states that at a minimum an applicant is currently required to meet the standards as set out in the regulation, but since newer versions of the DIBRs are available on VDOT’s website the agency allows submitters to use these newer versions. That said, the newer versions are preferred by VDOT and are generally used by applicants, and thus no substantial change in practice is expected. Further, VDOT points out the regulation (24VAC30-73-70.B.3) gives broad authority to VDOT’s permitting engineers (to “consider what improvements will be needed to preserve the operational characteristics of the highway, accommodate the proposed traffic and, if entrance design modifications are needed, incorporate them accordingly to protect the transportation corridor” for commercial entry designs. Likewise, the design process set out in the Road Design Manual states that, “Entrance details shown on this sheet may be modified to meet specific site requirements as directed or approved by the Engineer at the Residency or District, when based upon sound engineering principles.” Moreover, VDOT has a process for allowing design standard variations and spacing standard exceptions, which is set out in VDOT’s Instructional and Informational Memorandum IIIM-LD-227. Approximately 20 percent of entrances receive spacing exceptions (to allow closer spacing). Given the apparently minor differences between different versions of the design standards, and VDOT’s discretion on how the standards are enforced, it is also not

clear if there would be any significant economic impact from the potential design differences that would be enforced by treating the permit as a contract instead of as a regulatory mechanism.

Businesses and Other Entities Affected

There were 4,200 permits issued under this access management regulations in 2023. No permit applicant appears to be disproportionately affected.

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.⁵ An adverse impact is indicated if there is any increase in net cost or reduction in net benefit for any entity, even if the benefits exceed the costs for all entities combined.⁶ As noted above, based on the information provided by VDOT, there does not appear to be changes in the design standards or enforcement mechanisms that would create an adverse impact on permit applicants. Thus, no adverse impact appears to be indicated based on available information.

Small Businesses⁷ Affected:⁸

VDOT states that at least some of the permittees would be small businesses. However, no adverse impact on them is expected.

⁵ Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance.

⁶ Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation. As a result, DPB has adopted a definition of adverse impact that assesses changes in net costs and benefits for each affected Virginia entity that directly results from discretionary changes to the regulation.

⁷ Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

⁸ If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

Localities⁹ Affected¹⁰

Based on information available, the proposed amendments do not appear to disproportionately affect any particular localities, nor introduce costs on local governments.

Projected Impact on Employment

The proposed amendments do not appear to affect total employment.

Effects on the Use and Value of Private Property

No significant effects on the use and value of private property nor on real estate development costs are expected based on information available from VDOT.

⁹ “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

¹⁰ § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.