



Final Regulation Agency Background Document

Agency name	Virginia Department of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24 VAC 30-121
Regulation title	Comprehensive Roadside Management Program
Action title	Promulgation of Comprehensive Roadside Mgt. Program in Response to Legislative Mandate
Document preparation date	September 26, 2005

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing 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 addresses the current lack of a consistent, formal approach to roadside management. It sets forth the requirements applicable to all individuals or community groups that wish to work through local governments to landscape portions of highway rights-of-way. This regulation includes procedures for approval and criteria used to evaluate each proposal, and is intended to serve as a reference resource for parties involved in the planning, design, development, and maintenance of corridors and gateways into localities.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On September 15, 2005, the Commonwealth Transportation Board (CTB) approved the regulation 24 VAC 30-121-10 et seq. (**Comprehensive Roadside Management Program**).

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

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. The Federal Highway Administration has issued an interim memorandum establishing policy for the use of acknowledgement signs on highway right-of-way. The policy (see http://mutcd.fhwa.dot.gov/res-memorandum_highway_row.htm) allows these signs on highway rights-of-way, forbids advertising signs on the highway rights of way, and restricts the placement of acknowledgement signs and messages from certain high-risk areas.

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.

This regulation does not exceed the specific minimum requirements of any federal or state mandate. The regulation defines what can be done under this program, requires all participants to process activities through their respective local governments, and have local governments secure a land use permit under that authority.

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

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

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

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 or community groups that wish to work through local governments to landscape portions of highway rights-of-way.

The Comprehensive Roadside Management Program 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:

- Serving as a reference resource for parties involved in the planning, design, development, and maintenance of corridors and gateways into localities.
- 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.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

Since this is a new regulation establishing new procedures and policies for roadside management, and no current requirements exist, changes are addressed in greater detail in the "Changes made since the proposed stage" section. Revisions to the proposed version primarily deal with clarifying allowable activities under the program, establishing more detailed specifications for signage, ensuring that the program will not conflict with existing outdoor advertising regulation participants, and allowing more flexibility in the location of signs along primary and secondary highways.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.

The primary advantage to the public is in having a consistent framework to instruct them in the policies and procedures VDOT will use in accepting and using donations of funds or plant materials for landscaping; the specifications involving in the design, installation, and maintenance of acknowledgement signs; and specific maintenance issues on state-owned rights of way. VDOT has consulted with civic associations, garden clubs, local officials, and participants in an earlier pilot program on landscaping to develop regulations that fulfill the purpose of the legislative mandate, accommodate the needs and desires of the regulated parties, and preserve VDOT's interests in maintaining a safe, attractive, and convenient transportation network.

The experience of the city of Lynchburg should also be considered. The city sponsored a fund-raising initiative to implement its small-scale roadside improvement program, resulting in approximately twice the funds raised than were estimated to support the program. If this outcome happens again, VDOT will incur a financial benefit from having this program underwritten from private sources.

VDOT does not believe there are any disadvantages to the public, because both public- and private-sector interests will be served by having the regulation in place to provide consistent guidance in these matters. Given the fact that the General Assembly mandated promulgation of these regulations, there is clearly a perception that they will serve a pressing public need.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
20 A	Participants may fully fund development, establishment, and maintenance of landscaping	Changed text to read “development, establishment, or maintenance, or any combination of these, of landscaping”*	Clarifies individual activities can be funded independently or in combination
20 A	Participants must make application to designated VDOT representative	Revise text to read “application to, and approval by, a designated department representative.”*	Clarifies role of VDOT representative
20 C	Contributions shall guarantee an acknowledgement sign for five years	Revise text to read “Contributions shall allow an acknowledgement sign for five years, unless the need arises for removal or relocation of the sign.”*	Allows for unforeseen circumstances that might lead to need to move or relocate sign
30 A	Referenced regulations may be obtained from the Local Assistance Division	Referenced regulations may be obtained from the Asset Management Division	Reflects reassignment of Land Use Permit Manual (LUPM) responsibility to Asset Mgt. Division
30 B	Reference is to 24 VAC 30-150	Refer to regulation by title (“Land Use Permit Manual”)	Regulation is better known by title, and is referred by number previously
30 B	Local government bodies must include formal resolution with application	Add phrase “of endorsement” after formal resolution	Clarifies content of resolution
40 A	Reference is to LUPM by number 24 VAC 30-150 and title	Refer to regulation by title (“Land Use Permit Manual”) only, deleting VAC number	Regulation is better known by title, and is referred by number previously
40 D 1	Five design elements are listed that designs must not include to be approved	Add three elements to list (deal with pruning, improvements that affect visibility of businesses, structures, etc.), and revise punctuation*	Address input received during public comment period to ensure that program does not affect outdoor advertising
40 D 2	Regulation specifies sign background colors in d and e	Add Pantone Matching System (PMS) information to further identify colors, and allow Asset Mgt. Division to specify equivalents in d and e*	Provides additional information to assist participants in meeting specifications
40 D 2 f	Content must be no closer	Add -to read “1/2-inch” – no change	Stylistic change to be

	than one-half inch inside border	in dimension	consistent with rest of regulation
40 D 2	Six specifications are referenced (a – f)	Add g and h detailing additional design specifications for landscaping credit and installation	Provides additional information to assist participants in meeting specifications
40 D 4	Signs may be placed within right-of-way at three locations: non-controlled access primary and secondary highways; controlled access primary and secondary highways; and interchanges on controlled access highways	Segment locations by speed limit for non-controlled access primary and secondary highways and controlled access primary and secondary highways, changing spacing between signs to allow closer spacing at 45 mph or less*	Allows greater flexibility in locating signs due to speed limits
40 D 4	One panel per acknowledgement sign structure when placed on interchanges on controlled access interstates, primary and secondary highways	Delete panel restriction when placed on interchanges on controlled access interstates, primary and secondary highways	Allows more than one participant to appear on a single sign

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

**Virginia Roadside Management Program Regulations (24 VAC 30-121)
Public Comments received from May 15, 2005 through July 15, 2005**

Comment

VDOT Response

Commenter 1:

1) Another aspect of roadside management that might be considered is the improvement to the appearance of the lands within the loops on interchanges. As part of a course I took at George Mason University, I developed a conceptual idea for inviting corporate groups to landscape the interchanges and pay for advertising within the interchange.

1) Interchanges are included in this regulation. The program sets a minimum dollar value to participate; in return the sponsor will receive an acknowledgement sign on-site. VDOT did not solicit additional input.

This may or may not be relevant to your initiative here. If you are interested in further details on this concept I'd be glad to send further detail.

Commenter 2:

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Comment	VDOT Response
<p>I am quite interested in being kept informed as you move forward with your regulations. Thank you.</p>	
<p>2) 24 VAC 30-121-40. Conditions. This section needs an addition to clarify that, e.g., "Any permitted activity shall not block the view of any existing business or structure." While this may not be the precise language - it reflects the concern and needs to be included.</p>	<p>2) In revisions to the proposed regulation VDOT added that project designs shall not include specified elements, such as "any improvements that obscure or interfere with the view of existing lawfully erected advertising structures from the main traveled way."</p>
Commenter 3:	
<p>1) Should I wonder if we should not be questioning what right does a government agency have to force the public into viewing the landscape equivalent of "pop up" advertisements? I site the following Washington Post Article entitled "Our Society for Sale" for your consideration: http://www.washingtonpost.com/wp-dyn/content/article/2005/05/13/AR2005051301322.html</p>	<p>1) VDOT is implementing the regulation to comply with § 33.1-223.2:9 of the <i>Code of Virginia</i> passed by the 2004 session of the Virginia General Assembly (SB 260/Chapter 679).</p>
<p>2) If despite my first feeling on the subject and presuming that the regulation rolls through, I would suggest eliminating #1 and # 2 above (primary and secondary roads) altogether. Is there nowhere (even the countryside) where we wont be subject to government sponsored commercial bombardment? I also suggest changing the criteria for implementation by stipulating that the local permittee can not implement individually proposed activities without meeting the minimal criteria of:</p> <p>1. Must first have an approved cohesive design (master plan) and maintenance plan approved by the Department and valued at no less than \$60,000 for a primary interchange and \$240,000 for an interstate Interchange (values should be adjusted for inflation annually).</p> <p>2. These projects may be implemented on a quadrant basis valued at no less than \$15,000 (Primary) and \$60,000 (Interstate) per quadrant. This will require a meaningful investment on the part of the Permittee, and hopefully avoid a patchwork of landscape plantings that</p>	<p>2) There are many eligible entities that would be deprived of an opportunity to participate if VDOT eliminated primary and secondary roads from this program. This would appear to be in conflict with the wishes of the General Assembly, who did not restrict the regulatory scope to specific highway systems. Financial values suggested would restrict eligible entities of modest means from participating in the program. VDOT does require that a master plan be available for its review at all times. VDOT will review all permit applications for accuracy, completeness and compliance with state and federal requirements, so there will be oversight on proposed landscape designs.</p>
<p>3) Eliminate "Jurisdiction Wide Permits", which is something like writing a blank check.</p>	<p>3) Preserving jurisdiction-wide permits provide an incentive to localities to develop larger, more comprehensive landscape plans that will cover more areas. It promotes flexibility to participants to have both jurisdiction-wide and single activity permits.</p>

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Comment	VDOT Response
<p>4) Require review of said plans for approval via the Local Assistance office, following the same criteria for review and comment that all enhancement projects go through. Municipalities are used to this process. Plans should also be reviewed by the Central Office "Asset Management Division" for conformity to statewide programs and initiatives.</p> <p>Commenter 4: The City of Roanoke appreciates this opportunity to comment upon the draft regulations for the Comprehensive Roadside Management Program that have been developed by your advisory committee as a result of Senate Bill 260. We are strong supporters of initiatives that would enhance the appearance of major transportation corridors and offer the following comments for your further consideration:</p> <p>1) Understanding that the City of Roanoke would be a permittee, we wish to ensure that regulations would not preclude a non-profit organization from receiving the donations made toward this initiative, if we chose to handle the funds in this manner.</p> <p>2) We are pleased that interstate interchanges have been included among the locations eligible for landscaping. We note that the remainder of interstate highway right-of-way located between interchanges is not included and hereby urge the inclusion of all interstate right-of-way for landscaping eligibility, thereby further increasing available opportunity sites that could further reduce future VDOT maintenance responsibilities.</p> <p>3) Draft regulation provides that the site must "not be scheduled for future construction as defined within the department's current six-year improvement plan which would conflict with the activities proposed on the project". We wish to clarify that preliminary engineering and/or right-of-way phases scheduled within the current six-year plan would not infer a timeline for a future construction schedule nor cause the department to deny such approval.</p> <p>4) We support the specifications for the acknowledgment signs and respectfully suggest that the department ensure that the size of the signs will reasonably allow lettering sizes that can be easily read by motorists traveling at speeds appropriate for the adjoining roadway.</p> <p>5) We suggest that the background color options not be limited to the four (4) identified in the regulations.</p>	<p>4) Districts will implement the program and have direction to make the appropriate decisions concerning approval of permits. It would be inefficient to have all plans come to the Central Office for review.</p> <p>1) The proposed regulation does not prevent nonprofits from receiving funds.</p> <p>2) The Advisory Committee did not support this provision at the current time.</p> <p>3) If construction funding is not identified in the six year plan, the Department does not anticipate construction in the next six years and the landscaping should not be rejected only on this point</p> <p>4) Sign sizes are based on existing specifications from the Lynchburg Expressway Appearance Fund (LEAF), a successfully implemented program by the city of Lynchburg. This lettering is satisfactorily legible to motorists and will make the new program signs consistent with the LEAF signs</p> <p>5) Small number of background colors promotes consistency to motorists to identify the Comprehensive Roadside</p>

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Comment

VDOT Response

Management Program, so this suggestion was not implemented.

6) We urge the department to delete the requirement regarding sign placement along controlled access primary and secondary highways that states "no greater than one acknowledgement sign structure per direction per one-half mile of main traveled way" in an effort to not lose opportunity sites for landscaping.

6) VDOT added language for controlled access primary and secondary highways dividing them by speed limit, and specifying ¼ mile restriction for highways with speeds up to or equal to 45 mph, and retaining the ½ mile restriction for highways with speeds above 45 mph, except for interchanges.

7) Acknowledgement signs that are implemented as a result of contributions by sponsors toward new planting installations should also be available to sponsors that provide toward maintenance of planting installations, using similar threshold dollar amounts.

7) VDOT amended language to include maintenance as eligible for acknowledgement signs.

Thank you for your careful consideration of these aspects of this program.

Commenter 5:

I am corresponding to you on behalf of the Outdoor Advertising Association of Virginia ("OAAV").

With respect to the proposed regulations, OAAV would recommend that 24 VAC 30-121-40 c. be amended to add a new subparagraph 5 as follows: "Not obscure or interfere with the view of existing outdoor advertising structures from the main traveled way of the roadway and if the view of an outdoor advertising structure is impaired, the outdoor advertiser may apply to the Department for a vegetation control permit under Section 33.1-371.1 and 24 VAC 30-200-20."

In revisions to the proposed regulation VDOT stated that project designs shall not include specified elements, such as "any improvements that obscure or interfere with the view of existing lawfully erected advertising structures from the main traveled way."

This additional language will make it clear that the Department will determine that the installation of landscaping pursuant to the Comprehensive Roadside Management Program will not interfere with the visibility of existing outdoor advertising structures. Members of OAAV have problems with roadways in municipalities planting new landscaping in front of existing outdoor advertising structures for the purpose of ultimately eliminating the visibility of the outdoor advertising from the main traveled way of the roadway.

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VDOT Response

With respect to most roadways in the Commonwealth clearly subject to the jurisdiction of the Department, when a locality plants landscaping which blocks the visibility of an outdoor advertising structure from the main traveled way of the roadway, the outdoor advertiser applies to the Department for a vegetation control permit under state law. Upon receipt of the vegetation control permit, the outdoor advertiser is allowed to cut the vegetation to allow visibility of the outdoor advertising structure under state law and the Department's regulations. Since a number of the local programs established under the Comprehensive Road Management Program will be in municipalities where the jurisdiction of not clearly stated in state law, this amendment to the proposed regulations will prevent a locality from using the Comprehensive Roadside Management Program in such a way as to block visibility of existing outdoor advertising structures. The inclusion of this recommended language is important for OAAV. Should there be questions, or if you would like to discuss this matter, please do not hesitate to contact me.

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Since this is a new regulation, and no current requirements exist, changes are addressed in the "Changes made since the proposed stage" section.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no negative impact to the factors listed.