



Exempt Action Proposed Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) citation	24 VAC 30-92
Regulation title	Secondary Street Acceptance Requirements
Action title	Notice of public comment period.
Date this document prepared	3/26/2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

This regulation sets forth the requirements applicable to all streets in the Commonwealth that are designated to become part of the secondary system of state highways, including procedures for approval and criteria used to consider the acceptance of new streets for maintenance as part of the secondary system. (Note: This regulation does not apply to the counties of Arlington or Henrico, which maintain their own roads, but the pavement and right of way widths may apply in the independent cities or towns with populations greater than 3,500, pursuant to §33.1-41.1, *Code of Virginia*.)

The new regulation will replace and supersede the current Subdivision Street Requirements (24 VAC 30-91). Pursuant to Chapter 382 of the 2007 Acts of Assembly (Senate Bill 1181), the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the *Code of Virginia*) do not apply to initial promulgation of the regulation.

Chapter 382 of the 2007 Acts of Assembly requires that the Commonwealth Transportation Board include several provisions in the regulation. These mandatory provisions are as follows:

- requirements to ensure the connectivity of road and pedestrian networks with the existing and future transportation network;
- provisions to minimize stormwater runoff and impervious surface area, and

- o provisions for performance bonding of new secondary streets and associated cost recovery fees.

The proposed draft regulation was developed in consultation with a VDOT internal technical committee established by the Commissioner and an Implementation Advisory Committee established by the Secretary of Transportation. The Implementation Advisory Committee consisted of stakeholders from the development community, local governments, planning district commissions, environmental organizations and other stakeholders.

The proposed regulation was further revised based on input and feedback from the Virginia Chapter of the American Planning Association, developers, planning district commissions and the general public.

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 number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The Office of the Attorney General has reviewed the proposed regulation and affirmed that the Commonwealth Transportation Board (Board) has the authority to promulgate it, and that the exemption has been properly cited.

Chapter 382 of the 2007 Acts of Assembly (SB1181) added §33.1-70.3 to the *Code of Virginia*. The legislation requires the Board to develop Secondary Street Acceptance Requirements, promulgated by regulation, to determine the conditions and standards that must be met before streets constructed by developers, localities, and entities other than the Virginia Department of Transportation (VDOT) will be accepted into the state secondary system for maintenance by VDOT. In accordance with Chapter 382 of the 2007 Acts, on March 20, 2008, the Board directed VDOT to submit the proposed regulation to appear in the Virginia Register and on the Virginia Regulatory Town Hall, to solicit further public comment.

No federal statutes pertain to the regulation. Title 33.1 of the *Code of Virginia* contains many statutory references to the secondary system and the authority to issue regulations. VDOT, the Commissioner, and the Board are granted "control, supervision, management, and jurisdiction" over the secondary system of state highways by §33.1-69. Furthermore, the Board has general authority to make regulations concerning the use of the state highway system pursuant to §33.1-12. Section 33.1-229 gives the Commissioner discretionary authority over the expenditure of state funds for the secondary system.

Purpose

Please explain the need for the new or amended regulation.

Chapter 382 of the 2007 Acts of Assembly (SB1181) added § 33.1-70.3 to the *Code of Virginia*. The legislation directs the Commonwealth Transportation Board ("Board") to develop Secondary Street Acceptance Requirements, promulgated by regulation, to set forth the conditions and standards that streets constructed by developers, localities and entities other than VDOT must meet to be accepted into the secondary system of stat highways for maintenance by VDOT.

The purpose of this initiative is to ensure that streets accepted into the secondary system of state highways for perpetual public maintenance provide public benefit.

The new regulation will supersede and replace the existing Subdivision Street Requirements (24 VAC 30-91).

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the initial promulgation of this regulation by the Board pursuant to Chapter 382.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate.

The proposed regulation contains several new substantive provisions incorporating the mandatory provisions of the enabling legislation (Chapter 382 of the 2007 Acts of Assembly).

Recognizing the diversity of the Commonwealth, proposed regulation would establish three area types (compact, suburban and rural) with graduated requirements that streets must meet for acceptance into the secondary system of state highways. The area type boundaries would be based on long-term local, regional and federal planning boundaries. The proposed regulation provides flexibility to allow local governments to modify the proposed area types.

Streets may be accepted individually or as a group (“network addition”) into the secondary system of state highways. Streets would need to provide public service, connectivity and pedestrian accommodations to be eligible for acceptance. The connectivity and pedestrian accommodation requirements vary based on the area type where the streets are located.

Pedestrian accommodations are required to be provided for streets or network additions to be eligible for acceptance. These requirements vary based on the nature and local of the development.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

This regulation will impact any locality that does not maintain local roadways within its jurisdiction.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

Though this notice the Board is soliciting comments on this regulatory proposal. In addition the Board welcomes comments on VDOT’s Subdivision Street Design Guide and Road Design Manual.

Status, background and other supporting information will continue be available throughout this regulatory process online at <http://www.vdot.virginia.gov/projects/ssar/>. Anyone wishing to submit written comments may do so by email at SSARComments@vdot.virginia.gov.

Comments may also be submitted via regular US Mail at:

SSAR Public Comment
c/o VDOT Policy Office
1401 East Broad Street
Richmond, Virginia 23219

All comments must include the name and address of the commenter. In order to be considered during this comment period, comments must be received by 5:00 PM on June 30, 2008.

Public hearings will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

- April 30 at 4 p.m. in Harrisonburg: Rockingham County Administration Center, 20 East Gay Street, Harrisonburg, Virginia 22802
- May 7 at 4 p.m. in Bristol: VDOT Bristol District Office Auditorium, 870 Bonham Road, Bristol Virginia 24201
- May 14 at 5:30 p.m. in Fairfax: Northern Virginia Community College Ernst Cultural Center Forum Area, 8333 Little River Turnpike, Annandale, Virginia 22003
- May 21 at 4 p.m. in Richmond: VDOT Central Office Auditorium, 1221 East Broad Street, Richmond, Virginia 23219

Though this regulatory action is exempt from the APA, Chapter 382 of the 2007 Acts of Assembly requires that the Board solicit and consider public comment in the development of this regulation. To this end, the Board published a NOIRA on June 11, 2007, to solicit public comment, with particular and specific emphasis on (i) how to accomplish the specific mandatory provisions as established by §33.1-70.3 B (as discussed above), (ii) other concepts or requirements that should be addressed in the new regulation, (iii) issues or concepts in the current Subdivision Street Requirements (24 VAC 30-91) that should be modified or eliminated in the new requirements, (iv) comment on approaches to the mandatory provisions and other issues in the other regulatory documents listed above, and (v) comment on other best practices and approaches from other jurisdictions.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

There are no alternatives to promulgation of a new regulation.

Family impact

Please assess the 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.

The Secondary Street Acceptance Requirements will have a positive impact on the institution of the family and family stability. This regulation will help reduce long-term traffic congestion, support and promote more active and healthy lifestyles, and encourage the development of communities with enhanced quality of life.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

A comparison of the proposed regulation with the existing Subdivision Street Requirements is posted on the VDOT's website at <http://www.vdot.virginia.gov/projects/ssar/>.