



Virginia
Regulatory
Town Hall

Proposed Regulation Agency Background Document

Agency Name:	Virginia Department of Transportation (Commonwealth Transportation Board)
VAC Chapter Number:	VAC 24-30-71-10 et seq.
Regulation Title:	Minimum Standards of Entrances to State Highways
Action Title:	Proposed Revision to Existing Regulation
Date:	May 14, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary

Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This regulation sets forth the requirements approved by the Commonwealth Transportation Board, and implemented by VDOT, regarding the control of the use of highway rights-of-way when it is necessary to provide access to commercial, private, and industrial properties abutting state roads. The proposed amendments combine external input associated with a periodic review of the regulation, along with a review by in-house engineering staff. The majority of the amendments clarify wording, update references to documents associated with the regulation, or modify defined terms to provide more information.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

State source of legal authority:

In general terms, § 33.1-12(3) (see below) vests the Commonwealth Transportation Board with the powers and duties to regulate traffic operations on systems of state highways not in conflict with the laws of this Commonwealth:

The Commonwealth Transportation Board shall be vested with the following powers and shall have the following duties:

(3) Traffic regulations. - To make rules and regulations, from time to time, not in conflict with the laws of this Commonwealth, for the protection of and covering traffic on and the use of systems of state highways and to add to, amend or repeal the same.

Specific statutory authority for promulgating the existing regulation is set forth in §§ 33.1-197 and 33.1-198 (see below):

§ 33.1-197. Connections over shoulders of highways for intersecting private roads.

The Commonwealth Transportation Commissioner shall permit, at places where private roads leading to and from private homes intersect improved highways, suitable connections from such points of intersection, over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such private roads safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways.

§ 33.1-198. Connections over shoulders of highways for intersecting commercial establishment entrances.

The Commonwealth Transportation Commissioner shall permit, at places where commercial establishment entrances are desired to intersect improved highways, suitable connections from such points of intersection over and across the shoulders and unimproved parts of such highways to the paved or otherwise improved parts thereof, so as to provide for the users of such entrances

safe and convenient means of ingress and egress with motor vehicles to and from the paved or otherwise improved parts of such highways; provided, however, that any person desiring such an entrance shall first be required to obtain a permit therefor from the Commonwealth Transportation Commissioner and shall provide the entrance at his expense and construct or have constructed the same, including such safety structures as are required by the Commonwealth Transportation Commissioner, pursuant to "Minimum Standards of Entrances to State Highways" on file in the Department of Transportation, Richmond, Virginia, and in the office of the Highway District Engineer and Resident Engineers.

All commercial entrances whether or not constructed under this section shall be maintained by the owner of the premises at all times in a manner satisfactory to the Commonwealth Transportation Commissioner.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than \$5 nor more than \$100 for each offense. Following a conviction and fifteen days for correction, each day during which the violation continues shall constitute a separate and distinct offense and be punishable as such. Such person shall be civilly liable to the Commonwealth for actual damage sustained by the Commonwealth by reason of his wrongful act.

Given the general authority granted the CTB to make regulations at its discretion, and the specific authority granted the Commissioner concerning the issuance of permits, as well as the specific reference to the regulation by title, the General Assembly clearly intended that VDOT have broad control over the types of entrances installed under these statutes. Providing safe ingress and egress for entrance users is a responsibility of the Commonwealth of Virginia and the Department of Transportation. The granting of commercial entrance installations is based on user types, traffic volumes, horizontal and vertical alignments and sight distances, and posted or the 85th percentile operating speeds. VDOT must be able to review permits applied for under this regulation to ensure that deviations are justified from safety and infrastructure integrity standpoints, and the variables mentioned above are taken into account. Text of all statutes cited can also be accessed at the following website:

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

The Highway Commission, predecessor to the CTB, originally established minimum standards in 1946; six editions of the regulation have been printed since then. The Office of the Attorney General (OAG) has consistently affirmed the CTB's authority to promulgate such regulations. The OAG reviewed the proposed amendments, and concurred by correspondence dated April 30, 2002, that the CTB is authorized to make the amendments, and that they are consistent with the statutory authority granted.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The rationale for the amendments is as follows:

- To implement public input with which VDOT concurs that is intended to improve the clarity or usefulness of the regulation; and
- To make routine updates to referenced material associated with the regulation.

VDOT believes that such amendments are essential to fulfilling the goals set for the regulation, namely:

1. To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. Is the regulation written clearly and understandably?

VDOT is obligated to ensure that the health and safety of VDOT and non-VDOT workers, pedestrians and motorists using the highways of the Commonwealth are preserved. The regulation provides a framework whereby uniform standards are established to control the use of highway rights-of-way when it is necessary to provide access to commercial, private, and industrial properties abutting state roads. These controls not only protect through traffic from indiscriminate interferences; they also promote safe and convenient connections to public highways.

Permits are required when work is performed on or crossing any right-of-way under VDOT's jurisdiction. Permits are also required when modifications are needed for an existing entrance due to a change in the land use, or some other change that causes higher volumes of use. These requirements allow VDOT to ensure that work is performed with due regard to worker and motorist safety, as well as sound civil engineering principles. Therefore, both safety and preservation of the highway infrastructure are maintained.

VDOT believes that the protection of public safety and welfare is enhanced by making the proposed changes, especially since many of them came from the regulated public itself. Officials from Prince William County contributed several suggestions, most of which VDOT agreed to implement. These suggestions dealt primarily with adding to the list of defined terms, and adding descriptive technical terms (such as roundabouts) when discussing entrance requirements.

For example, modifying definitions to make them consistent with those used by other divisions will eliminate potential confusion. Providing additional information on accessibility to electronic documents associated with the regulation will improve the ease of use, since users can obtain the material more quickly.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

The structure of the regulation has not been affected. The substantive changes deal with updates to the documents associated with the regulation and the revised or additional wording to promote clarity. The wording revisions occur primarily in the "Definitions" section and sections dealing with design issues (such as 24 VAC 30-71-70 and 24 VAC 30-71-100). These items are discussed in greater detail elsewhere in this document.

Issues

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 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 include a sentence to that effect.

VDOT believes that the nature of the proposed revisions do not impose any disadvantages to the public or the Commonwealth. The changes are intended to provide users with a regulation that is easier to use and understand, and, since many of the changes are from public comment, the regulated parties should be satisfied with the results. VDOT will collect additional public input during the amendment process, and determine if additional changes are appropriate prior to final adoption by the CTB.

Fiscal Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.

(a) Projected costs for implementation/enforcement: The proposed revised regulation is not anticipated to impose additional implementation or enforcement costs to the Commonwealth, since it is currently being administered as part of daily field operations. It is anticipated that the proposed regulation will cost the Virginia Department of Transportation approximately \$10,000 to amend, print and distribute. No additional personnel will be needed to enforce the proposed amended regulation, since existing staff

currently administers the regulation. These employees handle other duties (e.g., land use permit-related tasks, hauling permit-related tasks, reviewing subdivision plans, etc.) as well, so they would still be necessary even if the regulation did not exist. The “Minimum Standards of Entrances to State Highways” refers to forms used for the “Land Use Permit Manual,” (24 VAC 30-150-10 et seq.), so it has no forms of its own. Instructions for accessing these forms electronically from VDOT’s Internet site are included as part of this submission.

The fee structure for entrance permits is included in the “Land Use Permit Manual” (24 VAC 30-150-10 et seq.), which is to be revised under the Administrative Process Act. Permit fees vary, depending on the type of work involved; there is a \$40 minimum charge plus whatever additive charges are appropriate. For example, a private entrance permit requiring permit surety would require a \$40 rate. If work on a private, commercial, street or road tie-in, median crossover, or subdivision entrance required more than one opening, an additive charge of \$5 per opening or crossover would be assessed, provided the work was not performed in conjunction with a Blanket Permit.

Since the proposed revisions to 24 VAC 30-71-10 et seq. do not change the cost of any fees or change the surety bond requirements, it would be premature to discuss the fee structure further at this time. It is anticipated that the revisions to the “Minimum Standards of Entrances to State Highways” will not affect the number of entrance permits issued—19,476 entrance permits were issued in 2001. In contrast, 88,528 total land use permits were issued in 2001, which indicates entrance permits constitute a significant share of the entire annual activity.

(i) fund source / fund detail: VDOT’s funds come primarily from the Transportation Trust Fund (a non-general fund), comprised of the Highway Maintenance and Operating Fund (HMO) and the Transportation Trust Fund (TTF). The HMO is derived from a mixture of state and federal revenue sources (fuel and hauling permit fees, tolls, road taxes, special-purpose federal funds, etc.), and is spent on administrative and support services (such as computer and physical plant services), highway system maintenance, and specialized activities undertaken by other state agencies (Departments of State Police, Rail and Public Transportation, Motor Vehicles, Old Dominion University, etc.). The Transportation Trust Fund is established by statute (§ 33.1-23.03:1), and is comprised of funds designated by the General Assembly. Revenues from this fund are spent on highways and other transportation modes, and specialized transportation programs and matching funds. For 2001, these funds totaled \$1.2 and 2.0 billion, respectively. The Virginia Transportation Act of 2000 for the first time made an appropriation of approximately \$545 million for highway projects, but this money will not be used in support of the regulation.

(ii) budget activity with a cross-reference to program and subprogram: Funding for Land Use permit activities comes from Program # 60300, Subprogram #09 (Construction Management).

(iii) One-time costs/expenditures: Based on typical costs for public hearings by VDOT’s Location and Design Division, overall staff and administrative costs for a single public

hearing to collect input for this regulation could range from \$1,500 - \$4,000, depending on the number of newspapers used, and the frequency of the ad. Only one public hearing is planned. On-going costs include expenses to print copies of the manual, etc. The regulation will be printed in-house, so there will be no outside printing costs.

(b) Projected costs of regulation on localities: There should be no direct costs to localities, since they are generally self-insured, and need not secure bonds for work on CTB right-of-way. They also generally do not perform their own installations, so any permit costs would be directly borne by the contractor performing the work. Permit fees would therefore constitute part of the administrative costs to perform the installation. Local public works employees use the “Minimum Standards of Entrances to State Highways” as one of many engineering guides in evaluating their own facilities.

(c) Description of those affected by regulation: This regulation would affect individuals who wish to install driveways to connect their homes to the highway, business owners, developers, etc., that construct or modify entrances connecting their businesses or subdivisions to the highway. Since there is an approximate one-to-one relationship between the number of permits issued and the affected parties, there are currently almost 20,000 parties that are affected by the regulation throughout the Commonwealth.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.

List of Proposed Changes to 24 VAC 30-71-10 et seq.

Officials from Prince William County contributed comments during the periodic review of the regulation held in 2001. Additionally, comments were received from in-house engineering staff. VDOT published technical corrections to two entrance illustrations in late 2001 as technical corrections; at the advice of the OAG, these have been referenced in the list of revisions.

Proposed Revision Page # and Section	Change	Remarks
1, §10	Revise effective date of Road Design Manual to “July 1998” (both versions)	Effective date confirmed with Location & Design Division
2, § 10	Add definition for “Crossover or Median Opening”	Suggestion from Public Comment Period associated with periodic review

Proposed Revision Page # and Section	Change	Remarks
3, § 10	Revise definition of “private entrance”	Makes definition consistent with that used by other divisions
3, §10	Revise definition of “private subdivision road or street”	Makes definition consistent with that used by other divisions
7, §70	Replace “intersectional” with “functional intersection” and add “or roundabouts” to first sentence	Suggestion from Public Comment Period associated with periodic review
8, §80	Revise effective dates of English and metric Road and Bridge Standards to “February 2001” and “January 1997,” respectively	Effective date confirmed with Location & Design Division
9, §80	Add explanation to sentence concerning problems with mountable curb adjacent to sidewalks	Suggestion from Public Comment Period associated with periodic review
9, §80	Revise effective dates of English and metric Road and Bridge Standards to “February 2001” and “January 1997,” respectively	Effective date confirmed with Location & Design Division
9, §90	Revise fourth sentence to include references to “culverts” and “structures”	Suggestion from Public Comment Period associated with periodic review
9, §100	Revise catchline to include “ or Median Openings”	Suggestion from Public Comment Period associated with periodic review; terms are synonymous
10, §100	Wherever “crossover” or “crossovers” appears in section, add “or median opening” or “or median openings” as appropriate	Change is consistent with addition of term in catchline
10, §100	Revise effective date of Road Design Manual to “July 1998”	Effective date confirmed with Location & Design Division
10, §100	Revise effective date of Road Design Manual to “July 1998”	Effective date confirmed with Location & Design Division
10, §100	Add reference to “traffic signal system, or both” to fourth sentence	Suggestion from Public Comment Period associated with periodic review
10, §110	Revise effective date of Road Design Manual to “July 1998”	Effective date confirmed with Location & Design Division
11, §120	Revise Code of Virginia reference	Title 15.1 recodified by General Assembly (Chapter 587,

Proposed Revision Page # and Section	Change	Remarks
		effective 12/1/97)
11, §120	Revise second sentence concerning curb ramps to add more description of feature	Suggestion from Public Comment Period associated with periodic review
11, §120	Revise effective dates of English and metric Road and Bridge Standards to “February 2001” and “January 1997,” respectively	Effective date confirmed with Location & Design Division
11, §130	Revise first sentence to delete “entering or exiting the entrance” to “traveling the through lanes of the roadway”	Suggestion from Public Comment Period associated with periodic review
11, §130	Delete reference to 1994 Policy on Geometric Design of Highways & Streets at end of first paragraph	Sentence is unnecessary with addition of material to Table 1
11, §130	Revise reference to Planting Guidelines	Checked with Environmental Division to determine that 2000 memorandum from Chief Engineer being used until revision is ready later this year; final version will be amended to include updated reference
12, §130	Revise Table 1 title to include “Median Openings;” add notation concerning English measurements; add material in metric measurements	Makes table content consistent with combined English/metric measurements used throughout regulation
16, §150	Revise first sentence in second paragraph to refer to “traffic signal system” rather than “installation”	Suggestion from Public Comment Period associated with periodic review
17, §160	Revise catchline to add “private”	More accurate description of contents of section; added by technical correction, effective December 2001
17, §160	Add “design” to catchline	Provides additional description to content of section

Proposed Revision Page # and Section	Change	Remarks
17, §160	Add line “The details set forth in the illustrations contained in this section may be reduced or modified if approved by the district administrator or engineer” after catchline	Avoids possible confusion to users by explicitly stating that illustrations do not depict the only way entrances can be constructed, and that modifications can be made if deemed necessary by the appropriate authority. Previous revisions to regulation in 1997-98 were implemented to provide resident engineers with the flexibility to use greater latitude in applying the requirements at site-specific locations.
31, 32, §160	Add line “Entrance details shown in these illustrations may be modified to meet specific site requirements as directed or approved by the Engineer, when based on sound engineering principles” to English and metric versions of private entrance illustrations	Added to both private entrance illustrations effective December 2001; note appears on all other illustrations in section. Previous revisions in 1997-98 were implemented to provide resident engineers with the flexibility to use greater latitude in applying the requirements at site-specific locations.
33, §170	Revise list of documents incorporated by reference	Department of Planning & Budget expressed concerns over types of documents included in list; removed documents filed as regulations; list includes those from third parties (e.g., AASHTO) and non-regulatory VDOT-generated documents
34, 35 §170	Revise format of 24 VAC 30-71-170	Provides additional information on how to obtain electronic and print copies of documents published by VDOT; format developed in collaboration with Registrar

Public comments that VDOT did not agree to implement are shown below, with reasons specified:

Prince William County Comment	VDOT Response
<p>Add “State Highway Access Management” code policies to regulation</p>	<p>Subject is more appropriate for consideration by the General Assembly; if enacted as law, they can be added to regulation through APA exempt action; Access Management is presently being addressed by an on call consultant through presentations to Resident Engineers and Localities. This suggestion may be considered for incorporation when and if the American Association of State Highway & Transportation Officials’ (AASHTO’s) newly revised sight distance requirements are adopted by VDOT.</p>
<p>In 24 VAC 30-71-100, add text to title (“Crossover <u>or Median Openings</u>”); add phrase “<u>and/or traffic signal system</u>” in last paragraph after phrase “including turn lanes”</p>	<p>VDOT concurs with all but use of “and/or”; Registrar’s <i>Style Manual</i> discourages use of term; VDOT will implement comments with Registrar’s recommended usage</p>
<p>Revise final sentence in 24 VAC 30-71-120 as follows: <u>“The current standard drawing for depressed curb ramp as shown in the current Road and Bridge Standards shall be utilized in the design.”</u></p>	<p>VDOT concurs with all but use of “current”; Registrar’s <i>Style Manual</i> requires effective date of documents incorporated by reference; VDOT will implement comments with Registrar’s recommended usage</p>
<p>In 24 VAC 30-71-130, make the following changes:</p> <ul style="list-style-type: none"> • Add the word “current” to VDOT’s Planting Guidelines Manual. • Correct typographical error (“ft.”) under Two Lane, Three Lane, and Four Lane Headings 	<ul style="list-style-type: none"> • Registrar’s <i>Style Manual</i> requires effective date of documents incorporated by reference; VDOT cannot honor request without violating Registrar’s usage rules • Typo appears in Internet version of regulation as listed in the <i>Va. Adm. Code</i>; table is correct in VDOT print edition of regulation; no VDOT action necessary.

Prince William County Comment	VDOT Response
<p>Add following to text in 24 VAC 30-71-140:</p> <p>“The department is responsible for the maintenance . . . within the normal shoulder <u>or within the right-of-way where the department has determined that such maintenance will assure a safer highway facility for the traveling public</u> as shown in Figure 1.”</p>	<p>VDOT’s Maintenance Division believes this revision would overburden VDOT with having to maintain an excessive length of entrance for a private residence in areas where wider rights of way exist.</p>
<p>Substitute word “current” for references to VDOT Road & Bridge Standards when it appears in the regulation</p>	<p>Registrar’s <i>Style Manual</i> requires effective date of documents incorporated by reference; VDOT cannot honor request without violating Registrar’s usage rules</p>

Alternatives

Please describe the specific 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.

VDOT does not believe that less burdensome alternatives exist to using a regulatory framework to meet the essential purpose of the regulation: to protect public safety and welfare, as well as the integrity of the State Highway System. The CTB has statutory authority to make regulations concerning the use of the system, and the General Assembly clearly intended this authority to be exercised, especially since the regulation is referenced by name in § 33.1-198, along with emphasizing the safety aspects required.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response.

VDOT received no new comments during the NOIRA period. Interested parties that did contact VDOT had already made comments prior to that time, and reserved the right to make additional comments at the public hearing stage after the proposed regulation is published in *The Virginia Register*.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The nature of the comments received and the number of them to be implemented indicates that the proposed changes improve the clarity and understandability of the regulation, at least for those who provided input.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

VDOT will establish a new periodic review date when the final regulatory documentation is prepared. This date is expected to occur in late 2005.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which 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.

Since the content of this regulation addresses public safety and civil engineering issues related to commercial and private entrances, it should have no effect on the factors listed above.