



Virginia
Regulatory
Town Hall

Final 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:	<i>Minimum Standards of Entrances to State Highways</i>
Action Title:	Amendment to Regulation
Date:	May 28, 2003

Please refer 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* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

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.

VDOT decided to update the regulation in conjunction with a Periodic Review conducted in 2001. At that time, officials from Prince William County provided recommendations to be incorporated into the regulation. In addition to considering these suggestions, VDOT determined that definitions needed to be reviewed to ensure that they were clear, unambiguous, and consistently used throughout VDOT work units. In addition, the regulation referenced some technical documents that needed to be updated. Finally, the section containing the sample entrance illustrations needed clarifying language.

Since the proposed version was published and circulated for review and comment, VDOT has made additional revisions to provide additional information, promote clarity, or update technical references relating to design features. Examples include a revised sight table derived from an updated reference for *A Policy on Geometric Design of Highways and Streets*, addition of a VDOT instructional memorandum as a Guidance Document, and addition of the 2000 edition of the *Manual on Uniform Traffic Control Devices (MUTCD)* as a document incorporated by reference. In the case of *A Policy on Geometric Design of Highways and Streets* and the *MUTCD*, both documents were adopted by VDOT as design standards pursuant to federal requirements after the proposed version was published. Other revisions resulted from either internal or external comments, and were made to promote clarity or eliminate redundant or obsolete text.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On May 15, 2003, the Commonwealth Transportation Board, a policy board with statutory authority to make regulations concerning highways, approved the revisions to VDOT’s *Minimum Standards of Entrances to State Highways (24-VAC-30-71-10 et seq.)*

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, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final 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, 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>

Due to the number and extent of the revisions resulting from internal review and the public comment periods after the proposed version was published in *The Virginia Register*, the Office of the Attorney General reviewed the revised regulation, and issued an opinion dated April 18, 2003, that the CTB has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law. A copy of the letter has been attached at the end of this form.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final 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 regulation needs to be revised to ensure that it fulfills its primary goal (To protect the public's health, safety, and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth) due to the following factors:

- Changes in technical documents referenced in the regulation; and
- Agency reorganization, which changed work titles, division names, etc.

For example, updating technical references ensure that entrance permits are processed in accordance with the most up-to-date civil engineering design principles, which help promote traffic safety. Updating obsolete work titles and division names ensures that duties have been clearly and properly assigned.

The revisions will also address the secondary goal (Is the regulation clear and understandable?) by providing more accurate or complete information to permit applicants and permit processing personnel alike. For example, expanding the list of definitions will provide information on technical terms of greater application to commercial and residential users. Likewise, providing updated versions of technical documents referenced will improve the ability to process permits, because updated principles and procedures will be available. Finally, metric data was also included for those who use that system of measurement, even though it is not a requirement.

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 of the regulatory action's detail.

Substantive changes have been made to § 10 (“Definitions”) to add or modify definitions, either to make them consistent with other usage within VDOT, or to reflect new technical guidelines or principles in the documents incorporated by reference. § 130 has been revised because the sight table was reproduced from the 2001 edition of *A Policy on Geometric Design of Highways and Streets*, which was adopted by the Federal Highway Administration as the design standard for highways in the National Highway System.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the 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.

1) Advantages to the public include the following:

- Permits will be processed in accordance with up-to-date engineering principles and procedures, facilitating safety;
- Expanded definitions and additional clarifications will improve the ability of permit applicants to understand how the permits are processed, and what factors are considered, facilitating efficiency.

There will be a disadvantage to the public in familiarizing themselves with the revisions, but any inconvenience should be negligible, given the nature of the revisions.

2) Advantages to the Commonwealth include the following:

- Permits will be processed in accordance with up-to-date engineering principles and procedures, increasing the level of service provided;
- Expanded definitions, instructions, and additional clarifications will improve the ability of VDOT personnel to process permits.

There will be a disadvantage to VDOT (the Commonwealth) in printing new copies of the regulation, and familiarizing staff with the revisions, but the effects should be negligible, given that the revisions were made to improve the accuracy and usefulness of the regulation.

3) The revisions will promote safety by updating technical references, and will clarify VDOT's flexibility to modify permits when justified.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The most substantive change is the revision to the sight tables in §130. When the proposed regulation was submitted to the Department of Planning & Budget for preparation of the Economic Impact Statement, VDOT had not yet adopted the revised sight tables as set forth in the 2001 edition of *A Policy on Geometric Design for Streets and Highways*. The Federal Highway Administration had adopted this updated document as its policy on design standards for highway construction and reconstruction projects on the National Highway System, and also provided implementation instructions in Volume 67, Number 29 (February 12, 2002) of the *Federal Register*. Other changes involved revisions to the list of terms defined and technical documents referenced in the regulation to provide greater clarity or to provide additional instructions to those processing the permits.

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 at the advice of the Office of the Attorney General (OAG), these are also referenced in the list of revisions.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

The following entities, individuals or organizations provided comments on the revisions to the manual:

- Prince William County Department of Public Works
- VDOT Northern Virginia Land Development Section
- VDOT Richmond District Traffic Section
- Ben Lineberry, Assistant Resident Engineer - Edinburg Residency, VDOT
- Jackson S. White, Lawyer in Abingdon, Va.
- VDOT Location and Design Division
- VDOT Salem District Traffic Section

All comments were reviewed and discussed within VDOT among various engineering disciplines to determine whether they could (or should) be implemented. Most of the technical comments (e.g., revisions to the defined terms, etc.) were accepted. Some comments (e.g., add graphic depictions, wording, etc.) were not adopted because they were deemed unnecessary or inappropriate for inclusion in the regulation, conflicted with the regulatory format, etc.

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 crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

Revisions below have been made since the proposed version was published that resulted from internal or external input. The majority of the comments were from internal commenters. Generally, revisions have been made to promote clarity, eliminate redundant or obsolete text, or provide updated technical information or instructions to facilitate permit processing.

Page # and Section	Change	Remarks
1, § 10	Revise definition for “Clear Zone” and add reference to MUTCD	From solicited comment; for clarity
2, § 10	Revise date for AASHTO document from 1994 to 2001 and add abbreviation	From solicited comment; new version approved by VDOT; FHWA approved implementation
2, § 10	Revise definition for “Crossover or Median Opening” to eliminate reference to “state-maintained”	From solicited comment
3, § 10	Add definition for “Functional Intersection Areas”	From solicited comment
3, § 10	Revise date for AASHTO document from 1994 to 2001 and add abbreviation in definition of “Operating Speed”	From solicited comment; new version approved by VDOT
3, §10	Revise definition of “Sight distance”	From solicited comment; new sight table adopted by VDOT after FHWA approval
5, §20	Update titles for those approving waivers	Due to agency reorganization
5, §30	Update titles for those rendering rulings	Due to agency reorganization
6, §50	Revise second and third sentences concerning plans as indicated	From solicited comment; for clarity
6, §50	Revise fourth sentence concerning ordinances as indicated	From solicited comment; for clarity

Page # and Section	Change	Remarks
7, §50	Revise fifth sentence concerning licensed design professional	From solicited comment; for clarity
7, §50	Revise sixth sentence deleting “maximum” as indicated	From solicited comment
8, §70	Revise first sentence concerning location as indicated	From solicited comment
8, §70	Revise second sentence as indicated	From solicited comment
8, §70	Add sentence concerning “managing appropriate access” as indicated	From solicited comment
8, §70	Add sentence concerning “cross-access easements” as indicated	From solicited comment
9, §80	Delete reference to “speed limit” and replace as indicated	From solicited comment
9, §80	Delete sentence concerning “mountable curb” as indicated	From solicited comment
10, §90	Add possessive “’s” as indicated in first sentence	From solicited comment
10, §90	Revise second sentence concerning licensed design professional	From solicited comment; for clarity
10, §90	Revise second sentence concerning licensed design professional	From solicited comment; for clarity
10, §90	Revise fourth sentence concerning “errant vehicle”	From solicited comment; for clarity
10, §100	Revise second and third sentences concerning “subsequent revisions” to 1998 document, and third sentence concerning “mobility management”	From solicited comment/due to agency reorganization
11, §100	Revise fourth sentence concerning title	Due to agency reorganization
11, §110	Revise catchline, and first sentence concerning acceleration lanes, Appendix C, and “subsequent revisions” to 1998 document	From solicited comment
11, §110	Add new sentence concerning “design and construction of these lanes”	From solicited comment
11, §120	Revise first sentence to delete reference to “physically handicapped”	From solicited comment
11, §120	Revise second sentence to add curb ramp reference drawings, and “applicable insertable sheet”	From solicited comment; for clarity
12, §130	Revise first sentence to add reference to “intersection”	From solicited comment; for clarity
12, §120	Add new second sentence	From solicited comment
12, §130	Revise references in section from “target” to “object”	From solicited comment
12, §130	Revise references in section from “1.07 m.” to	From solicited comment;

Page # and Section	Change	Remarks
	“1.08 m.”	related to new sight tables
12, §130	Add reference to 2001 AASHTO document on sight distance after deleted sentence	From solicited comment; for clarity
12, §130	In sentence dealing with landscaping guidance, delete reference to Chief Engineer’s 2000 memo, and replace with AASTHTO 2001 document reference	From solicited comment; for clarity
13, §130	Revise references to remove deleted words and add “critical” to “at least” and “minimum”	From solicited comment
13, §130	Add “for program development” to chief engineer and add “state location and design engineer”	Due to agency reorganization
13, §130	Add reference to IIM LD-227.1	From solicited comment; for additional guidance to VDOT users
14, §130	Revise English and Metric Measurement tables as indicated	New design standards in 2001 AASHTO document <i>A Policy on Geometric Design for Highways and Streets</i> , including sight table, adopted by VDOT pursuant to FHWA notice in <i>Federal Register</i> (Vol. 67, Number 29; February 12, 2002)
14, §130	Revise first footnote to add sentence at beginning; sentence concerning engineer discretion when operating speed is higher than legal speed limit; reference to Road Design Manual	New design standards in 2001 AASHTO document <i>A Policy on Geometric Design for Highways and Streets</i> , adopted by VDOT
14, §130	Revise second footnote to update reference to “2001” from “1994” and add abbreviation	From solicited comment; new version approved by VDOT
15, §130	Add third footnote concerning three-lane major roads	New sight table, etc., adopted by VDOT after FHWA approval
15, §160	Add new second sentence after catchline concerning entrance widths	From solicited comment; for clarity
34/35, §160	Delete proposed “Standard Private Subdivision Road/Street Entrance” (English Units)” and replace with new “Standard Private Subdivision Road/Street Entrance” (English Units)” (word “Private” is deleted from entrance depiction)	From solicited comment
36/37,	Delete proposed “Standard Private Subdivision	From solicited comment

Page # and Section	Change	Remarks
§160	Road/Street Entrance” (Metric Units)” and replace with new “Standard Private Subdivision Road/Street Entrance” (Metric Units)” (word “Private” is deleted from entrance depiction)	
39/40, §170	Revise list of documents incorporated by reference to add MUTCD in new B; re-designate old B as C; delete Chief Engineer’s 2000 memo from list; renumber list; update name of Construction Division in new #5 and 6	Updated to reflect new technical references/due to agency reorganization
41	Add VDOT IIM LD-227.1 as Guidance Document for this regulation	New technical guidance to aid in securing FHWA waivers

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the 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.

This regulation has no effect on the family or family stability, nor does it affect any of the factors listed above.



COMMONWEALTH of VIRGINIA

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MEMORANDUM

To: David L. Roberts
Quality Assurance Division
Department of Transportation

From: Todd E. LePage *TEL*
Assistant Attorney General

Re: Revisions to 24 VAC 30-71-10 *et seq.*
Minimum Standards of Entrances to State Highways

Date: April 18, 2003

As requested in your memorandum to Richard L. Walton, Jr., I have reviewed the final version of the proposed revisions to the Minimum Standards of Entrances to State Highways. I believe that §§ 33.1-12(3), 33.1-197 and 33.1-198 of the Code of Virginia authorize the Commonwealth Transportation Board to make the proposed revisions and that the proposed revisions are consistent with the authority granted in those sections.

You also inquired whether Instructional and Informational Memorandum (“IIM”) LD-227.1 was a “guidance document” under section 2.2-4001 of the Code. That section defines a guidance document as a document developed by a state agency “that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency’s rules or regulations”. IIM LD-227.1 provides guidance concerning how design exceptions are granted by the Federal Highway Administration in accordance with applicable regulations. Accordingly, I believe that IIM LD-227.1 meets the definition of a “guidance document” in § 2.2-4001 and that it is appropriate to refer to it in 24 VAC 30-71-130.

If you should have any further questions concerning this matter, please do not hesitate to contact me.

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