



Virginia  
Regulatory  
Town Hall

## Periodic Review and Retention of Existing Regulations Agency Background Document

<b>Agency Name:</b>	Virginia Department of Transportation (Commonwealth Transportation Board)
<b>VAC Chapter Number:</b>	24 VAC 30-210-10 et seq.
<b>Regulation Title:</b>	Policy on Placing Utilities Underground
<b>Action Title:</b>	Review and Retain
<b>Date:</b>	September 24, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to retain an existing regulation.

### Summary

*Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.*

This policy prescribes the policies, procedures, and reimbursement provisions for the underground relocation of existing overhead utility facilities on selected transportation improvement projects. The Office of the Attorney General has found that this regulation is exempt from the APA under Section 9-6.14:4.1 B 3.

### Basis

*Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.*

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*Code of Virginia* authority:

- § 33.1-12: Under subsection (3), the Commonwealth Transportation Board (CTB) has general authority to make regulations concerning use of the system of state highways. This power is necessarily broad in scope, since the CTB (as a policy board) makes decisions concerning financing, awarding of transportation contracts, oversees operations of VDOT and DRPT, and coordinates transportation activities in conjunction with the federal government. Therefore, the CTB needs to have discretionary power to issue regulations that complement the powers and duties set forth in the statute.
- § 33.1-44: The regulation applies to projects for the Urban System of Highways that are created and constructed in accordance with this statute. The law defines "construction or improvement" as "the supervising, inspecting, actual building, and all expenses incidental to the construction or reconstruction of a highway, including locating, surveying, design and mapping, costs of rights-of-way, signs, signals and markings, elimination of hazards of railroad grade crossings and expenses incidental to the relocation of any utility or its facilities owned by a municipality or by a public utility district or public utility authority." The CTB contributes matching funds in varying amounts as specified by the law, subject to the restrictions set forth. The CTB's discretion under this statute is limited in certain respects.

For example, it is obligated to issue matching funds when act of Congress requires that federal-aid highway funds made available for the construction or improvement of federal or state highways be matched. Likewise, there is a five million dollar restriction on additional costs the CTB may pay for placing aboveground utilities below ground. This cap applies to any construction or improvement project in any city having either a population of at least 130,000 but less than 150,000 or a population of at least 170,000 but less than 200,000 and funded in accordance with subdivision 2 of subsection B of § 33.1-23.1.

The CTB has flexibility in making decisions concerning other types of funding. For example, in the case of municipalities of 3,500 or more population and the Town of Wise, the Town of Lebanon, and the Town of Blackstone, the Commonwealth Transportation Board may contribute toward the costs of construction or improvement of any highway or street project for which no federal-aid highway funds are made available ninety-eight percent of the necessary funds if the municipality contributes the other two percent.

§ 33.1-96: This statute sets forth the procedure that the Commonwealth Transportation Commissioner follows in the acquisition of interests for exchange with railroads, public utility companies, public service corporations or companies, political subdivisions, or cable television companies. The Commissioner may, under the same procedure and conditions prescribed by Article 7, with respect to property needed for highway purposes, enter upon and take possession of such property to be conveyed to

any railroad, public utility company, public service corporation or company, political subdivision, or cable television company in the manner provided in §§ 33.1-119 through 33.1-129, and proceed with the relocation of the installations of the railroad or public utility company in order that the construction of the highway project may be carried out without delay.

The Commissioner has broad authority to take actions to facilitate timely construction of the project. For example, after the acquisition of the land, in the event the poles, lines or other facilities are not removed by such railroads or utility companies, etc., within sixty days from the date of the taking by the Commissioner, the Commissioner is authorized to remove and relocate such facilities at his own cost.

This regulation does not exceed the minimum requirements of the state mandate.

**Public Comment**

*Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.*

VDOT received no public comment during the Notice of Periodic Review period, so no response was prepared. No advisory group was formed to assist in the periodic review.

**Effectiveness**

*Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. Please assess the regulation’s impact on the institution of the family and family stability. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.*

Goals:

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?

This regulation has no direct effect on the family or family stability.

Goal 1: The regulation states explicitly in 24 VAC 30-210-50 that the location of utility facilities has a “material effect” on factors such as safety, aesthetics, and maintenance. Overhead facilities

can pose a safety hazard to motorists in case of accidents, detract from the scenic attractiveness of the surrounding terrain, and hamper efficient maintenance operations, such as mowing. Most utility relocation plans assume that existing overhead facilities will be replaced in a new overhead position, primarily because it is less expensive than relocating them underground. The regulation provides a means for the Commonwealth Transportation Commissioner to reimburse utility companies for a portion of the additional costs to replace existing overhead utility facilities with underground facilities. This mechanism encourages utilities to relocate their facilities in a safer, less obtrusive location, thereby increasing the safety, attractiveness, and ease of maintenance of the affected highway.

Therefore, the regulation helps the CTB and VDOT carry out an important part of the agency's mission – to provide safe, convenient, and efficient transportation programs and services – while ensuring that utilities need not bear all the costs associated with the relocation necessary to increase the safety and integrity of the road.

Goal 2: The regulation states its purpose, defines pertinent terms (e.g., “betterment,” “theoretical replacement facility cost,” etc.), and outlines the projects to which it is applicable. Requirements for localities to follow are detailed. Responsibilities of the utility owner and VDOT are discussed with respect to cost development and reimbursement, including documentation requirements. VDOT believes that the lack of public comment received concerning the regulation indicates general satisfaction with the format of the regulation and its clarity and ease of comprehension.

## Alternatives

*Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.*

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There is no viable substitute for a document that sets forth the policy and procedures concerning the relocation of utilities underground. Such a document ensures that localities, utilities, and the public have access to the policy used by the CTB and VDOT in decision-making on this issue. With a regulation of this type, all participants are aware of the requirements (e.g., limitations or exclusions, documentation preparation, and cost reimbursement considerations). The regulation also helps ensure that decisions made by the CTB and VDOT concerning these facilities are made consistently and fairly.

## Recommendation

*Please state that the agency is recommending that the regulation should stay in effect without change.*

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VDOT recommends that this regulation be retained without change.

### Family Impact Statement

*Please provide an analysis of the regulation's impact on the institution of the family and family stability including the extent to which it: 1) strengthens or erodes the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourages or discourages economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthens or erodes the marital commitment; and 4) increases or decreases disposable family income.*

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