

Agenda

Chapters 28 & 29 (2026 Acts of Assembly) Work Group Meeting #1

July 23, 2026

Meeting Room C, 3rd Floor, 9120 Lockwood Blvd, Mechanicsville, VA 23116

- A. Welcome and Introductions
- B. Electronic Participation Policy
- C. Initial Comments
- D. Discussion of 24VAC30-21 and 24VAC30-151
- E. Work Group Recommendations for Additional Regulations for Review
- F. Work Assignments and Next Meeting
- G. Adjournment

DRAFT

The following is the remote or electronic participation policy of the Ch. 28/29 Workgroup.

Member Remote Participation

Individual Workgroup members may participate in meetings of the Workgroup by electronic communication means to the full extent permitted by applicable law, including [§ 2.2-3708.3](#) of the Code of Virginia. (When such individual participation is due to a personal matter, such participation is limited by law to two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.)

This shall apply to the entire membership and without regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting.

Whenever a member wishes to participate from a remote location, the law requires a quorum of the Workgroup to be physically assembled at the primary or central meeting location. A member with a disability shall count toward the quorum as physically present, in accordance with law.

Virtual Meetings

The Workgroup may hold all-virtual public meetings to the full extent permitted by applicable law, including Virginia Code § 2.2-3708.3(C). Such all-virtual public meetings are limited by law to two meetings per calendar year or 50 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, and may not be held consecutively with another all-virtual public meeting.

When audio-visual technology is available, a member of a public body shall, for purposes of a quorum, be considered absent from any portion of the meeting during which visual communication with the member is voluntarily disconnected or otherwise fails or during which audio communication involuntarily fails.

Requests and Minutes

Requests for remote participation or that the Workgroup conduct an all-virtual public meeting shall be conveyed to Workgroup staff.

To send requests to staff, please submit them via email to Robert.Hofrichter@VDOT.Virginia.gov. If a request is made in another manner, staff shall ensure a record exists of the request and its handling.

Individual participation from a remote location shall be considered approved unless a member asserts that such participation would violate this policy or the provisions of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 et seq.). If a member's participation from a remote location is challenged, then the Workgroup shall vote whether to allow such participation.

DRAFT

The request for remote participation or that the Workgroup conduct an all-virtual public meeting shall be recorded in the minutes of the meeting. If the Workgroup votes to disapprove of the member's participation because such participation would violate this policy, such disapproval shall be recorded in the minutes with specificity. The minutes shall include other information as required by law (see Va. Code §§ 2.2-3707 and 2.2-3708.3), depending on the type of remote participation or all-virtual public meeting.

This policy was originally adopted at the Workgroup meeting on , 2026, and shall
be reviewed and adopted once annually by recorded vote at a public meeting.

The following additional explanation is intended to inform understanding of current legal requirements and is not legal advice, an authoritative interpretation of the law, or required by this policy independent of the requirements of law.

Additional Explanation of Current Requirements for Remote Participation by Members

When a meeting is scheduled to be held in person, there are four circumstances set out in subsection B of § 2.2-3708.3 where individual members of a public body may participate from a remote location instead of participating in person. In order to use these provisions, the member must notify the chair of the public body of one of the following four reasons for remote participation:

1. The member has a temporary or permanent disability or other medical condition that prevents the member's physical attendance;
2. A medical condition of a member of the member's family requires the member to provide care that prevents the member's physical attendance, or the member of the body is a caregiver who must provide care for a person with a disability at the time of the meeting, thereby preventing the member's physical attendance;
3. The member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting; or
4. The member is unable to attend the meeting due to a personal matter and identifies with specificity the nature of the personal matter. However, the member may not use remote participation due to personal matters more than two meetings per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater.

The limitations to two meetings per calendar year or 25 percent of the meetings held per calendar year does not apply to the first three types of remote participation (member's disability or medical condition, need to provide medical care for a family member or principal residence distance from the meeting location), it only applies when the member participates due to personal matter.

Additional Explanation of Current Requirements for Minutes

- If an individual member remotely participates in a meeting, a general description of the remote location must be included in the minutes. (That does not need to be an exact address— for example, the minutes might read that "[Member] participated from his home in [locality]" or that "[Member] participated from her office in [locality].") The remote location does not have to be open to the public.
- If a member remotely participates due to a (i) temporary or permanent disability or other medical condition that prevented the member's physical attendance, or (ii) family member's medical condition that required the member to provide care for such family member, thereby preventing the member's physical attendance, that fact must be included in the minutes. While the fact that a disability or medical condition prevents the member's physical attendance must be recorded in the minutes, identifying the specific disability or medical condition is not required.
- If a member remotely participates because the member's principal residence is more than 60 miles from the meeting location, the minutes must include that fact.
- If a member remotely participates due to a personal matter, the minutes must include the nature of the personal matter cited by the member.
- As stated above, if remote participation by a member is disapproved because it would violate the participation policy adopted by the public body, such disapproval must be recorded in the minutes with specificity. Note that even if remote participation is disapproved, the member may continue to monitor the meeting from the remote location but may not participate and may not be counted as present at the meeting.

Additional Explanation of Current Requirements for All-Virtual Meetings

The provisions of Virginia Code § 2.2-3708.3(C) and the following concern all-virtual meetings:

1. An indication of whether the meeting will be an in-person or all-virtual public meeting is included in the required meeting notice, along with a statement notifying the public that the method by which a public body chooses to meet shall not be changed unless the public body provides a new meeting notice in accordance with the provisions of § 2.2-3707;
2. Public access to the all-virtual public meeting is provided via electronic communication means;
3. The electronic communication means used allows the public to hear all members of the public body participating in the all-virtual public meeting and, when audio-visual technology is available, to see the members of the public body as well;
4. A phone number or other live contact information is provided to alert the public body if the audio or video transmission of the meeting provided by the public body fails, the public body monitors such designated means of communication during the meeting, and the public body takes a recess until public access is restored if the transmission fails for the public;

DRAFT

5. A copy of the proposed agenda and all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting is made available to the public in electronic format at the same time that such materials are provided to members of the public body;
6. The public is afforded the opportunity to comment through electronic means, including by way of written comments, at those public meetings when public comment is customarily received;
7. No more than two members of the public body are together in any one remote location unless that remote location is open to the public to physically access it;
8. If a closed session is held during an all-virtual public meeting, transmission of the meeting to the public resumes before the public body votes to certify the closed meeting as required by subsection D of § 2.2-3712;
9. The public body does not convene an all-virtual public meeting (i) more than two times per calendar year or 25 percent of the meetings held per calendar year rounded up to the next whole number, whichever is greater, or (ii) consecutively with another all-virtual public meeting; and
10. Minutes of all-virtual public meetings held by electronic communication means are taken as required by § 2.2-3707 and include the fact that the meeting was held by electronic communication means and the type of electronic communication means by which the meeting was held. If a member's participation from a remote location pursuant to these requirements is disapproved because such participation would violate the policy adopted pursuant to subsection D of § 2.2-3708.3, such disapproval shall be recorded in the minutes with specificity.

If an individual member had already reached his limit on participation due to personal matters, but the public body scheduled an all-virtual public meeting, the member could still participate in all virtual public meeting because the numerical limits are counted separately for the different types of electronic meetings.

80VAC96_87: Virginia Administrative Code

Title 24. Transportation And Motor Vehicles Agency 30. Department of Transportation

Chapter 21. General Rules and Regulations of the Commonwealth Transportation Board

24VAC30-21-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Commonwealth Transportation Board.

24VAC30-21-20. General provisions concerning permits and use of right-of-way.

A. No work, occupancy, or nontransportation uses of any nature may be allowed or performed on the system of state highways or any real property under the ownership, control, or jurisdiction of the board or VDOT, including the right-of-way of any highway in the system of state highways, until written permission is first obtained from VDOT. Written permission is granted by way of permit pursuant to 24VAC30-151 or by the letting of a contract by and between VDOT or the board and any other party, which automatically grants to that party such permission for the area under contract, unless otherwise stated in the contract. VDOT is authorized to establish specific requirements for such permits, including permit authority, application procedure, and conditions under which a permit may be denied or revoked.

B. Any structure placed upon or within the right-of-way pursuant to a permit issued by VDOT or otherwise shall be relocated or removed whenever ordered by VDOT. Such relocation or removal shall be accomplished at no expense to the Commonwealth unless VDOT agrees or has agreed otherwise.

80VAC96_707: Virginia Administrative Code

Title 24. Transportation And Motor Vehicles Agency 30. Department of Transportation

Chapter 151. Land Use Permit Regulations

Part I. Definitions

24VAC30-151-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context indicates otherwise:

"Backfill" means replacement of suitable material compacted as specified around and over a pipe, conduit, casing, or gallery.

"Boring" means a method of installation that is done underground and by which a carrier or casing is jacked through an oversize bore. The bore is carved progressively ahead of the leading edge of the advancing pipe as soil is forced back through the pipe. Directional drilling, coring, jacking, and other similar trenchless digging methods are also considered boring.

"Carrier" means a pipe directly enclosing a transmitted liquid or gas. "Casing" means a larger pipe enclosing a carrier.

"Central office permit manager" means the VDOT employee assigned to provide management, oversight, and technical support for the VDOT land use permit program.

"Chief Engineer" means the VDOT employee in overall supervision of engineering functions for VDOT or that employee's designee.

"Clear zone" means the total border area of a roadway, including any parking lanes or planting strips, that is sufficiently wide for an errant vehicle to avoid a serious accident.

"Commissioner of Highways" means the individual serving as the chief executive officer of the Virginia Department of Transportation or a designee.

"Conduit" means an enclosed tubular runway for carrying wires, cable, or fiber optics.

"Cover" means the depth of the top of a pipe, conduit, or casing below the grade of the roadway, ditch, or natural ground.

"Crossing" means any utility facility that is installed across the roadway, either perpendicular to the longitudinal axis of the roadways or at a skew of no less than 60 degrees to the roadway centerline.

"District administrator" means the VDOT employee assigned the overall supervision of the departmental operations for one of VDOT's construction and maintenance districts.

"District administrator's designee" means the VDOT employee assigned by the district administrator to supervise land use permit activities.

"Drain" means an appurtenance to discharge liquid contaminants from casings.

"Encasement" means a structural element surrounding a pipe.

"Erosion and sediment control" means the control of soil erosion or the transport of sediments caused by the natural forces of wind or water.

"Grounded" means connected to earth or to some extended conducting body that serves instead of the earth, whether the connection is intentional or accidental.

"Highway," "street," or "road" means a public way for purposes of vehicular travel, including the entire area within the right-of-way.

"Limited access highway" means a highway especially designed for through traffic, over which abutters have no easement or right of light, air, or access by reason of the fact that their property abuts upon such limited access highway.

"Longitudinal installations" means any utility facility that is installed parallel to the centerline of the roadway or at a skew of less than 60 degrees to the roadway centerline.

"Median" means the portion of a divided highway that separates opposing traffic flows.

"Non-betterment cost" means the cost to relocate an existing facility as is with no improvements.

"Permit" means a document that, in conjunction with the laws of the Commonwealth, sets the requirements, terms, and conditions under which VDOT allows a right-of-way to be used or changed by a permittee.

"Permit agreement" means an agreement supplementary to a permit that sets out additional conditions for the enjoyment of the permit that have been agreed to by the permittee and VDOT.

"Permittee" means the person, firm, corporation, entity, or government entity that has been issued a permit.

"Pipe" means a tubular product or hollow cylinder made for conveying materials.

"Pole line" means poles or a series or line of supporting structures, such as towers, cross arms, guy wires, racks (conductors), ground wires, insulators, and other materials assembled and in place for the purpose of transmitting or distributing electric power or communication, signaling, and control. It includes appurtenances such as transformers, fuses, switches, grounds, regulators, instrument transformers, meters, equipment platforms, and other devices supported by poles.

"Professional engineer" means a person who is qualified to practice engineering by reason of special knowledge and use of mathematical, physical, and engineering sciences and the principles and methods of engineering analysis and design acquired by engineering education and experience, and whose competence has been attested by the Virginia Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects through licensure as a professional engineer.

"Relocate" means to move or reestablish existing facilities.

"Right-of-way" means that property within the system of state highways that is open or may be opened for public travel or use or both in the Commonwealth. This definition includes those rights-of-way in which the Commonwealth has a prescriptive easement for maintenance and public travel. The property within a right-of-way includes the travel way and associated boundary lines and the area in between, the subsurface below and air above the property, parking and recreation areas, rest and service areas, and other permanent easements for a specific purpose appurtenant to the right-of-way.

"Roadside" means the area adjoining the outer edge of the roadway. The median of a divided highway may also be considered a "roadside."

"Roadway" means the portion of a highway, including shoulders, for vehicular use. A divided highway has two or more roadways.

"Service connections" means any utility facility installed overhead or underground between a distribution main, pipelines, conduits, lines, wires, or other sources of supply and the premises of the individual customer.

"Shared resource agreement" means an agreement or permit allowing one or more utilities to occupy the limited access right-of-way consistent with the requirements of 24VAC30-151-30 and 24VAC30-151-740.

"System of state highways" means all highways, streets, and roads under the ownership, control, or jurisdiction of VDOT, including the primary, secondary, and interstate systems.

"Transportation project" means a project in development or under construction to provide a new public transportation facility or to improve or maintain the existing system of state highways.

"Traveled way" means the portion of the roadway for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

"Trenched" means installed in a narrow, open excavation.

"Underground utility facilities" means any item of public or private property placed below ground or submerged for use by the utility.

"Utility" means a privately, publicly, or cooperatively owned line, facility, or system for producing, transmitting, or distributing telecommunications, cable television, broadband, electricity, gas, oil, petroleum products, water, steam, stormwater not connected with highway drainage, or any other similar commodity, including any fire or police signal system.

"VDOT" means the Virginia Department of Transportation.

"Vent" means an appurtenance to discharge gaseous contaminants from a casing or carrier pipe.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Part II. Authority

24VAC30-151-20. Authority.

The General Rules and Regulations of the Commonwealth Transportation Board (24VAC30-21) are adopted pursuant to the authority of §§ 2.2-1151.1, 33.2-118, 33.2-210, 33.2-240, 33.2-241, 33.2-245, 33.2-266, 33.2-338, 33.2-357, 56-458, 56-460, 56-484.28, 56-484.30, 56-484.31, and 56-484.32 of the Code of Virginia, and in accordance with the Virginia Administrative Process Act (Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia). These rules and regulations provide that no work or nontransportation uses of any nature shall be allowed or performed on the system of state highways or any right-of-way or real property under the ownership, control, or jurisdiction of VDOT until written permission has been obtained from VDOT. Real property includes right-of-way and the system of state highways. Written permission is granted either by permit pursuant to this chapter or a state-authorized contract let by VDOT or the Commonwealth Transportation Board. A permit grants the permittee only those rights set forth in the permit and only to the extent of whatever rights VDOT has in the right-of-way. The permittee is responsible for obtaining permission from others who may also have an interest in the property or right-of-way and for satisfying all other applicable legal requirements, whether federal, state, or local. Employees of VDOT are authorized to issue permits only as described in this chapter. This chapter prescribes the specific requirements of such permits.

24VAC30-151-30. Types of permits and permit agreements.

A. Single use permits. A single use permit allows the permittee to perform specific activities within limited access or nonlimited access right-of-way or VDOT property at a specific location that are not otherwise covered by a districtwide permit held by the permittee. The district administrator's designee shall be responsible for the issuance of all single use permits, except that requests for a permit for tree trimming and tree removal may be issued by the district roadside manager in consultation with the district administrator's designee. The size of the specific location covered by a single use permit shall be at the discretion of the district administrator's designee. The permit issued for the

original installation of facilities also allows the permittee to repair or perform routine maintenance operations to those facilities after installation. A single use permit shall be obtained prior to the undertaking of the following actions, even if the activities being conducted may be allowed under a districtwide permit:

1. Stopping or impeding highway travel in excess of 15 minutes or implementing traffic control that varies from the standard, or any combination of these, as outlined in the Standards for Use of Traffic Control Devices to Classify, Designate, Regulate, and Mark State Highways (24VAC30-315).
2. Performing work within limited access right-of-way.
3. Trimming or cutting any trees located within the right-of-way.
4. Applying any pesticide or landscaping within the right-of-way.
5. Construction of a permanent entrance to a highway.
6. Cutting or disturbing highway pavement, shoulders, or ditches.
7. Installing electrical lines that exceed 34.5 kV.
8. Installing telecommunication services that exceed 100-pair copper cable or the fiber-optic cable diameter equivalent.
9. Making permanent upgrades to an existing entrance. Temporary improvements to an existing entrance that will be removed upon the completion of the permitted activity will not require a separate single use permit.
10. Grading within the right-of-way beyond the immediate area of a temporary entrance.

E. As-built permits. Utility facilities required to be relocated within a right-of-way due to a conflict with a transportation project or other use of the right-of-way by the public or the Commonwealth may be issued an as-built permit upon completion of the project and the mutual agreement between VDOT and the utility for such relocation.

F. Agreements. In addition to obtaining a single use permit, a utility may be required to enter an agreement with VDOT allowing the utility to use the limited access right-of-way in exchange for monetary compensation, the mutually agreeable exchange of goods or services, or both.

1. An agreement is required for:

a. Any new longitudinal occupancy of the limited access right-of-way or median where none have existed before, as allowed for in 24VAC30-151-300 and 24VAC30-151-310.

b. Any occupancy of a VDOT-owned wireless support structure.

All agreements shall specify the terms and conditions required in conjunction with work performed within the right-of-way. Agreements shall provide for the payment of monetary compensation in the amount deemed appropriate by the Commissioner of Highways.

2. Consistent with the requirements of 24VAC30-151-740, a shared resource agreement allows one or more utilities to occupy the limited access right-of-way in exchange for each such utility providing a combination of goods, facilities, services, or monetary compensation to VDOT. The Commissioner of Highways and each such utility will agree upon the appropriate goods, facilities, or services to be provided, the length of the term, and compensation through the provision of a particular service, facility, or monetary compensation, or a combination thereof. Any shared resource agreement shall also provide for compensation as may be deemed appropriate by the Commissioner of Highways in any renewal term. The shared resource agreement shall specify the initial and renewal terms of the lease.

24VAC30-151-40. General rules, regulations, and requirements.

A. A permit is valid only on right-of-way under VDOT's jurisdiction and on VDOT-owned property. County and city permits must be secured for work on roads and streets under the county or city jurisdictions. A permit covers the actual performance of work within right-of-way and the subsequent maintenance, adjustments, or removal of the work as approved by the central office permit manager or the district administrator's designee. The Chief Engineer shall approve all activities within limited access right-of-way prior to permit issuance. A permit must be obtained by the owner of the facility to be used or located within right-of-way or VDOT-owned property or the adjacent property owner in the case of entrance permits. A permit may be issued jointly to the owner and contractor if the contractor is the owner's authorized agent. The permittee and the permit's contractors and agents shall comply with all applicable federal, state, and local laws and requirements. The terms of every permit include and incorporate by reference this chapter as well as all federal, state, and local requirements applicable to a permittee's activities under the permit.

C. The permittee shall comply with the terms of the permit. The permittee shall construct and use each facility proposed to be used or installed pursuant to a permit exactly as shown on the approved permit application, including:

1. Showing distances from edge of pavement, existing and proposed right-of-way lines, depths below existing and proposed grades, depths below ditch line or underground drainage structures, or other features.
2. Showing any existing utilities within close proximity of the applicant's proposed work or use.
3. Showing the location of poles, guy wires, pedestals, relief valves, vent pipes, and other equipment or structures.
4. Showing the height of wires or cables above the crown of the roadway.

E. The permit is not valid unless signed by the central office permit manager or the district administrator's designee.

F. The permittee shall secure and maintain commercial general liability insurance to protect against liability for personal injury and property damage in connection with all activities undertaken under a permit. Comprehensive general liability insurance with limits of at least \$1 million per occurrence and \$5 million aggregate or in amounts otherwise required by VDOT as stated in the permit shall be maintained at all times. Insurance must be obtained prior to start of permitted work and shall remain valid through the permit completion date. The central office permit manager or the district administrator's designee may require a valid certificate of insurance or policy documents from the issuing insurance agent or agency prior to issuing a permit.

G. The permittee assumes full responsibility for all damages caused by facilities installed or uses undertaken under a permit. The permittee must make every effort to install facilities in a manner to preclude the possibility of damage.

H. The permittee is responsible for the continued maintenance of facilities placed within a right-of-way.

I. VDOT and the Commonwealth shall be absolved from all responsibilities, damages, and liabilities associated with granting the permit and the permittee's activities in the right-of-way, including activities performed by the permittee's contractors or agents. All facilities shall be placed and maintained in a manner to preclude the possibility of damage to VDOT-owned facilities or other facilities placed within the right-of-way by permit. A permittee shall indemnify and hold harmless the Commonwealth, the Commonwealth Transportation Board, the Commissioner of Highways, VDOT, and the consultants,

representatives, agents, and employees of those agencies from and against any and all claims, causes of action, losses, costs, attorney fees, expenses, and damages that directly or indirectly result from or arise out of the permittee's activities or violations in the right-of-way; from any of the permittee's contractors, subcontractors, consultants, representatives, agents, or employees; or from anyone for whom acts or violations the permittee is or may be liable. A permittee shall be civilly liable to the Commonwealth for all actual damage caused by a violation of the terms of a permit or this chapter.

J. A copy of the permit and approved site plans or sketches shall be maintained at every job site and such items made readily available for inspection when requested by VDOT or any authorized personnel. Strict adherence to the permit is required at all times. Any activity other than that described in the permit shall render the permit null and void. Any changes to the permit shall be coordinated and approved by the district administrator's designee prior to construction.

K. For permit work within the limits of a transportation project, the applicant must obtain the consent of the project's general contractor in writing before the permit will be issued. The permittee shall coordinate with VDOT and the project's general contractor and schedule all work within the limits of a transportation project to avoid conflicts with work of the transportation project.

L. All activity associated with the permit shall be in accordance with all federal, state, and local requirements and all applicable VDOT requirements, standards, and specifications and as otherwise required by the terms of the permit.

M. Disturbances within the right-of-way shall be kept to a minimum during permitted activities. Permit applications for proposed disturbances within the right-of-way that include disturbance on property directly adjacent to the right-of-way, in which the combined area of disturbance constitutes a land-disturbing activity as defined in § 62.1-44.15:24 of the Code of Virginia and the Virginia Erosion and Stormwater Management Program (Part II (9VAC25-875-40 et seq.) of 9VAC25-875), must be accompanied by documented approval of erosion and sediment control plans and stormwater management plans for the activity, as applicable, from the corresponding jurisdictional local or state government plan approving authority.

N. Restoration shall be made in accordance with VDOT standards and specifications as set forth in the terms of the permit and Part II of 9VAC25-875.

Additionally, the permittee shall:

1. Ensure compliance with the Virginia Erosion and Sediment Control Program (Part III (9VAC25-875-210 et seq.) of 9VAC25-875).

2. Ensure copies of approved erosion and sediment control plans, stormwater management plans, if applicable, and all related non-VDOT issued permits are available for review and posted at every job site at all times.
3. Take all necessary precautions to ensure against siltation of adjacent properties, streams, or other bodies of water in accordance with VDOT's policies and standards as specified in the terms of the permit and any applicable laws or regulations enforced by the State Water Control Board.
4. Keep dusty conditions to a minimum by using VDOT-approved methods.
5. Cut pavement only as approved by the district administrator's designee. Pavement cuts, restoration, and compaction efforts, to include all materials, shall be accomplished in accordance with VDOT specifications as set forth in the terms of the permit.
6. Ensure that an individual certified by VDOT in erosion and sediment control is present whenever any land-disturbing activity under the permit is performed. All land disturbance activities performed under a permit shall be in accordance with all local, state, and federal requirements. The installation of underground facilities by a boring method shall only be deemed as a land-disturbing activity at the entrance and exit of the bore hole and not the entire length of the installation.
7. Stabilize all disturbed areas immediately upon the end of each day's work and reseed in accordance with VDOT specifications as set forth in the terms of the permit. Temporary erosion and sediment control measures shall be installed in areas not ready for permanent stabilization.
8. Ensure that no debris, mud, water, or other material is allowed on the highways. Permission, documented in writing or electronic communication, must be obtained from VDOT prior to placing excavated materials on the pavement. When so permitted, the pavement shall be cleaned only by approved VDOT methods.

O. Accurate "as built" plans and profiles of work completed under permit shall be furnished to VDOT upon request, unless waived by the district administrator's designee. For utility permits, the owner shall maintain "as built" plans, profiles, and records for the life of the facility that describe the utility usage, size, configuration, material, location, height or depth, and special features, such as encasement.

P. All work shall be performed in accordance with the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia) and the Rules for Enforcement of the Underground Utility Damage Prevention Act (20VAC5-

309). For work within 1,000 feet of traffic signals or adjacent to other VDOT utilities, the permittee shall contact the VDOT Customer Service Center. The permittee shall notify VDOT on the business day preceding 48 hours before excavation.

Q. Permission, documented in writing or electronic communication, must be obtained from the district administrator's designee prior to blocking or detouring traffic. Additionally, the permittee shall:

1. Plan construction and maintenance operations with regard to safety and minimum traffic interference.
2. Coordinate notification with all county or municipal officials.
3. Ensure that permitted work does not interfere with traffic during periods of peak flow on heavily traveled highways.
4. Plan work so that closure of intersecting streets, road approaches, and other access points is held to a minimum and as noted and approved in the permit documents.
5. Maintain safe access to all entrances and normal shoulder slope of the roadway across the entire width of the entrance.

R. The permittee shall be responsible for any settlement in the backfill or pavement after the completion of work activities under the permit or for any settlement caused by the installed facility.

24VAC30-151-70. Plan review and permit inspection.

When a permit request is of extraordinary nature or extent, or both, in lieu of the fee payment outlined in 24VAC30-151-710, VDOT may require the permittee to pay the actual costs associated with plan review, other administrative tasks, inspection, and equipment usage. A VDOT inspector, consultant inspector, or both, may be assigned to inspect or monitor, or both, any work performed within the right-of-way. The absence of an inspector does not relieve the permittee from performing the authorized work in accordance with the provisions of the permit.

Part VI. Utilities

24VAC30-151-300. General provisions governing utilities.

Utility installations on all rights-of-way shall comply with the following provisions:

1. Requests for accommodations of utility facilities within the right-of-way shall be submitted to and reviewed by the district administrator's designee.
2. Utility lines shall be located to minimize the need for later adjustments, to accommodate future highway improvements and transportation projects, and to allow servicing of the lines with minimum interference to traffic. VDOT retains the right to reject installations that do not address these factors. Utility facilities shall conform to the type of highway and specific conditions for the highway section involved. Utility facilities within the right-of-way and utility attachments to structures shall be of durable materials, designed for long service life, and be relatively free from the need for routine servicing and maintenance. All attachments to structures must be approved in advance by VDOT.
3. Any conflicts with existing utility or other facilities shall be resolved between the permittee and the owner of the other utility or facility.
4. No utility shall be attached to a structure unless the applicant or permittee can demonstrate that the installation and maintenance of the utility will not interfere with VDOT's ability to maintain the structure, will not impact the durability and operational characteristics of the structure, and, except for installation, will not require access to the facility from a limited access highway. The attachment method must be approved by VDOT (see 24VAC30-151-430).
5. The encasement of underground utility crossings shall be in accordance with 24VAC30-151-370.

24VAC30-151-310. Utility installations within limited access highways.

Utility installations on all limited access highways shall comply with the following additional provisions:

1. Requests for all utility installations within limited access right-of-way shall be reviewed and, if appropriate, be approved by the Chief Engineer prior to permit issuance.
2. New utilities will not be permitted to be installed parallel to the roadway longitudinally within the controlled or limited access right-of-way lines of any highway, except that where other alternative locations are not in the public interest or under resource sharing agreements, such installations may be permitted under strictly controlled conditions and only with approval of the Commissioner of Highways. The applicant must satisfy the following conditions, at a minimum:

- a. That the installation will not adversely affect the safety, design, construction, operation, maintenance, or stability of the highway.
 - b. That the accommodation will not interfere with or impair the present use or future expansion of the highway.
 - c. That any alternative location would be contrary to the public interest. This determination would include an evaluation of the direct and indirect environmental and economic effects that would result from the disapproval of the use of such right-of-way for the accommodation of such utility.
 - d. No tree removal or severe tree trimming is required for the installation.
3. Overhead and underground utilities may only be installed within limited access right-of-way under a shared resource agreement subject to VDOT's need for the shared resource.
4. All authorized longitudinal utility installations within limited access right-of-way shall be located in a utility area established along the outer edge of the right-of-way. Special exceptions must be approved by the Chief Engineer.
5. Authorized overhead utility installations within limited access right-of-way shall maintain a minimum of 21 feet of vertical clearance.
6. Authorized underground utility installations within limited access right-of-way shall have a minimum of 36 inches of cover.
7. Service connections to adjacent properties shall not be permitted from authorized utility installations within limited access right-of-way.
8. Overhead crossings shall be located on a line that is perpendicular to the highway alignment.
9. A utility access control line will be established between the proposed utility installation, the through lanes, and ramps.

24VAC30-151-330. Overhead utility installations within nonlimited access highways.

- A. Overhead utility crossings shall be located on a line that is perpendicular to the highway alignment. Longitudinal installations shall be located on a uniform alignment as near as possible to the right-of-way line to provide a safe environment and space for future highway improvements and other utility installations.
- B. Overhead longitudinal utilities may be installed on all nonlimited access highways by a public or private utility company under a permit, except in scenic areas, as follows:

1. Overhead utilities may be installed within nonlimited access right-of-way under permit, including a districtwide permit as allowed under 24VAC30-151-30 B 1.

2. All overhead installations, excluding wireless support structure facilities, shall be located adjacent to the right-of-way line and in accordance with clear zone requirements. Repairs and replacement of similar installations may be performed in existing locations under the existing permit, provided the work shall not impede the traveled way. Additional poles, taller poles, or cross-arms require a separate permit.

C. Longitudinal installations of overhead lines within the right-of-way shall be limited to single-pole construction. Joint-use, single-pole construction will be encouraged at locations where more than one utility or type of facility is involved, especially where the right-of-way widths approach the minimum needed for safe operations or maintenance requirements, or where separate installations may require extensive removal or alteration of trees.

D. Consideration will not be given to poles placed on a highway right-of-way of less than 40 feet in width.

E. Highway crossings should be grouped at one location whenever practical, and as near as possible to right angles to the center of the road.

F. New overhead installations crossing existing or proposed nonlimited access highways shall provide a minimum of 18 feet of vertical clearance or at a minimum height as established by the standards and specifications set forth in the terms of the permit, whichever is greater. The overlash of telecommunications lines onto existing lines or strand is not considered a new overhead installation.

G. Existing overhead utilities that are found to be in horizontal or vertical conflict with proposed traffic control devices or signage shall be adjusted, at the permittee's expense, to provide an unobstructed view for the traveling public and the appropriate clearance from traffic control devices or signage.

H. The vertical clearance for all new overhead installations parallel to an existing or proposed highway and within nonlimited access rights-of-way shall be in compliance with standards as specified in the terms of the permit. The overlash of telecommunications lines onto existing lines or strand is not considered a new overhead installation.

I. When crossing a median, all poles or other overhead facilities shall be placed to maintain an adequate clear zone in each direction.

J. Longitudinal pole line installation will not be allowed in the median.

24VAC30-151-340. Underground utility installations within nonlimited access highways.

Underground longitudinal utilities may be installed under permit on all nonlimited access highways, except in scenic areas, as follows:

1. Underground utilities may be installed within nonlimited access right-of-way by a public or private utility company under a permit, including a districtwide permit as allowed under 24VAC30-151-30 B 1.
2. All underground utilities within rights-of-way will require a minimum of 36 inches of cover, except that underground cables that provide broadband, cable, or telecommunications services shall be at a minimum of 30 inches of cover, and except as authorized pursuant to 24VAC30-151-30 B 1. The district administrator's designee has the discretion to grant an exception to depth of cover requirements if the permittee encounters obstacles preventing the installation of main line facilities at the minimum depth of cover, as long as installation at the minimum depth of cover is resumed when the installation passes by the obstacle.
3. An underground utility shall not be attached to a structure unless the applicant or permittee can demonstrate that the installation and maintenance methods will not interfere with VDOT's ability to maintain the structure, will not impact the durability and operational characteristics of the structure, and will not require access from the roadway or interfere with roadway traffic. The attachment method must be approved by VDOT (see 24VAC30-151-430).
4. The proposed method for placing an underground facility requires approval from the district administrator's designee. All underground facilities shall be designed to support the load of the highway and any superimposed loads. All pipelines and encasements shall be installed in accordance with 24VAC30-151-360 and 24VAC30-151-370.
5. No underground utility shall be installed within the median area except under shared resource agreements or with approval from the Commissioner of Highways.
6. Underground utilities may be installed under sidewalk areas with approval from the district administrator's designee.

24VAC30-151-370. Encasement requirements.

A. Encasement pipe shall be required where it is necessary to avoid trenched construction, to protect carrier pipe from external loads or shock, or to convey leaking fluids or gases away from the areas directly beneath the traveled way if the utility has less

than minimal cover; is near footings of bridges, utilities or other highway structures; crosses unstable ground; or is near other locations where hazardous conditions may exist. Encasements crossing nonlimited access rights-of-way shall extend a suitable distance beyond the slope for side ditches and beyond the back of curb in curbed sections. The district administrator's designee may require encasement pipe even if an installation meets industry standards for nonencasement.

Casing pipe shall be sealed at the ends with approved material to prevent flowing water and debris from entering the annular space between the casing and the carrier. All necessary appurtenances such as vents and markers shall be included.

B. Uncased crossings of welded steel pipelines carrying transmittants that are flammable, corrosive, expansive, energized, or unstable, particularly if carried at high pressure, may be permitted subject to the following conditions:

1. The applicant provides supporting data documenting that its proposed installation meets or exceeds industry standards for unencased crossings,
2. The applicant provides supporting data documenting that the pipeline will support the anticipated load generated by highway traffic, and
3. All unencased pipeline crossings that fail must be relocated a minimum of 36 inches to either side of the failure. The failed line shall then be filled with grout and plugged at both ends.

24VAC30-151-380. Appurtenances.

A. When vents are required, they shall be located at the high end of casings less than 150 feet in length and generally at both ends of casings longer than 150 feet. Vent standpipes shall be on or beyond the right-of-way line to prevent interference with maintenance or pedestrian traffic.

B. A permit may be granted to install drains for any underground facility. The permittee shall ensure the achievement of positive drainage.

C. National uniform color codes for identification of utilities shall be used to place permanent markers.

D. Utility access points (e.g., manholes and handholes) shall be placed in the shoulders, utility strips, or other suitable locations. When no other alternative is available, consideration will be given to placement of manholes in the pavement surface. Every effort should be made to minimize utility access point installations at street intersections and in the normal wheel path of the travel lanes. Utility access points shall be designed and

located in such a manner that shall cause the least interference to other utilities and future highway expansion.

E. Utility access point frames and covers, valve boxes, and other castings located within the paved roadway, shoulder, or sidewalk shall be constructed flush with the finished grade. Utility access point frames and covers, valve boxes, and other castings located within sidewalk areas shall be constructed in accordance with the Americans with Disabilities Act (42 USC § 12101 et seq.).

F. The permittee shall install shutoff valves, preferably automatic, in lines at or near the ends of structures and near unusual hazards, unless other sectionalizing devices within a reasonable distance can isolate hazardous segments.

24VAC30-151-400. Utility adjustments in conjunction with a VDOT project.

Where facilities are directed to be relocated in conjunction with a transportation project, the permittee must obtain a new permit for any facilities relocated within or to right-of-way. Unless otherwise specifically provided by the Code of Virginia or this chapter, all relocation is to be done in a timely manner so as to not interfere with the project and at the permittee's sole expense, and relocation must be done in accordance with the VDOT policies and procedures included in the terms of the permit. Utilities may be placed within the right-of-way by permit, including adjustments and work performed in connection with utilities agreements. Utilities placed within the right-of-way shall conform to the requirements of this chapter.

24VAC30-151-410. Utility installations in scenic areas.

Any new utility installations within the right-of-way or on other lands that were acquired or improved with federal-aid or direct federal highway funds, and are located within or adjacent to areas of scenic enhancement and natural beauty are discouraged. Such areas include public parks and recreational lands, wildlife and waterfowl refuges, historic sites, scenic strips, overlooks and scenic byways.

Any new utility installation in the above-mentioned areas shall be in accordance with 23 CFR 645.209h.

24VAC30-151-430. Attachments to bridge structures.

A. Utilities may be located on highway grade separation structures across interstate or other controlled access highways, over crossroads, and across major streams or valleys only in extreme cases and with approval of the district structure and bridge engineer in accordance with VDOT specifications.

B. Lines carrying electricity shall be insulated, grounded, and installed in a conduit or pipe to manholes or poles at either end of the structure, as applicable.

C. If a utility is placed on a structure, the installation shall be located beneath the structure's floor between the girders or beams and at an elevation above the bottom flange of the beam. The utility shall not be attached to the outside of the exterior beam, parapets, or sidewalks.

D. Water and sewer attachments shall follow general controls previously listed for providing encasement and allied mechanical protection. In addition, shut-off valves shall be provided outside the limits of the structure.

E. Utilities attached to structures crossing waterways may require a water quality permit.

F. Natural gas and petroleum mains may not be attached to highway structures.

24VAC30-151-650. Test holes.

Test holes may be excavated in the roadway or right-of-way for the purpose of geological surveys or studies, monitoring wells and for locating existing utilities within the right-of-way. A single use permit shall be obtained for test holes. All test holes shall be kept to the smallest size and number possible. A surety will be required to sufficiently restore the appearance of the right-of-way or to repair the pavement of the roadway. The permittee shall demonstrate to the satisfaction of the district administrator's designee that the location of the site will not compromise the safety, use or maintenance of the roadway.

Part IX. Fees and Surety

24VAC30-151-700. General provisions for fees, surety, and other compensation.

Except as otherwise provided in this part, the applicant shall pay an application fee to cover the cost of permit processing, pay additive fees to offset the cost of plan review and inspection, and provide surety to guarantee the satisfactory performance of the work or use under permit. For locally administered VDOT projects, the permit fees are waived and in lieu of a surety, the locality may (i) provide a letter that commits to using the surety in place or (ii) have the contractor execute a dual obligation rider that adds VDOT as an obligee to the surety bond provided to the locality, with either of these options guaranteeing the work performed within state-maintained right-of-way under the terms of the land use permit for that purpose. A copy of the original surety and letter or rider shall be attached to the land use permit. Except as provided in 24VAC30-151-740, utilities within the right-of-way shall pay an annual accommodation fee as described in 24VAC30-151-730. In the event of extenuating circumstances, the Commissioner of Highways may waive all or a portion of any of the fees or surety.

24VAC30-151-710. Fees.

A. Single use permit. A nonrefundable application fee shall be charged to offset the cost of reviewing and processing the permit application and inspecting the project work, in accordance with the requirements in this subsection:

1. The application fee for a single permit is \$100. Public rights-of-way use fees may be charged in lieu of permit fees in certain situations in accordance with law.
2. Additive costs shall be applied as indicated in this subdivision. The district administrator's designee will determine the total permit fees using the following schedule:

Activity	Fee
Private Entrances	none
Commercial Entrance	\$150 for first entrance \$50 for each additional entrance
Street Connection	\$150 for first connection \$50 for each additional connection
Temporary Logging Entrance	\$10 for each entrance
Temporary Construction Entrance	\$10 for each entrance
Turn Lane	\$10 per 100 linear feet
Crossover	\$500 per crossover
Traffic Signal	\$1,000 per signal installation
Reconstruction of Roadway	\$10 per 100 linear feet
Curb and Gutter	\$10 per 100 linear feet
Sidewalk	\$10 per 100 linear feet
Tree Trimming (for outdoor advertising)	in accordance with § 33.2-1221 of the Code of Virginia
Tree Trimming (all other activities)	\$10 per acre or 100 feet of frontage
Landscaping	\$10 per acre or 100 feet of frontage
Storm Sewer	\$10 per 100 linear feet
Box Culvert or Bridge	\$5 per linear foot of attachment

Activity	Fee
Private Entrances	none
Commercial Entrance	\$150 for first entrance \$50 for each additional entrance
Street Connection	\$150 for first connection \$50 for each additional connection
Temporary Logging Entrance	\$10 for each entrance
Temporary Construction Entrance	\$10 for each entrance
Turn Lane	\$10 per 100 linear feet
Crossover	\$500 per crossover
Traffic Signal	\$1,000 per signal installation
Reconstruction of Roadway	\$10 per 100 linear feet
Curb and Gutter	\$10 per 100 linear feet
Sidewalk	\$10 per 100 linear feet
Tree Trimming (for outdoor advertising)	in accordance with § 33.2-1221 of the Code of Virginia
Tree Trimming (all other activities)	\$10 per acre or 100 feet of frontage
Landscaping	\$10 per acre or 100 feet of frontage
Storm Sewer	\$10 per 100 linear feet
Box Culvert or Bridge	\$5 per linear foot of attachment

3. Permit term extensions for active permits shall incur a monetary charge of \$50. Expired permits may be reinstated; however, fees for reinstatement of expired permits shall be \$100. Notwithstanding 24VAC30-151-80, commuter lot mobile food vending permits may not be extended or reinstated.

4. If a permit is canceled prior to the beginning of the permitted activity, the application fee and the additive fee will be retained as compensation for costs incurred by VDOT during plan review.

5. The district administrator's designee, in accordance with 24VAC30-151-70, may establish an account to track plan review and inspection costs and may bill the permittee not more often than every 30 calendar days. If an account is established for these costs, the permittee shall be responsible for the nonrefundable application fee and the billed costs. When actual costs are billed, the district administrator's designee shall waive the additive fees in subdivision 2 of this subsection.

A. Performance surety. The applicant shall provide surety to guarantee the satisfactory performance of the work or use for which a permit is requested. Surety shall be based on the estimated cost of work to be performed within the right-of-way or as otherwise stated in this chapter. Surety may be in the form of a check, cash, irrevocable letter of credit from a financial or banking institution, performance bond, or any other VDOT-approved method. An applicant for a districtwide permit for utilities shall provide a continuous surety in the amount of \$10,000 per county. An applicant for a districtwide permit for logging entrances shall provide a continuous surety in the amount of \$10,000 per district. There is no surety requirement for districtwide permits for surveying. Under no circumstances shall VDOT or any agency of the Commonwealth be named the escrow agent. No funds deposited with VDOT as surety shall be subject to the payment of interest. The surety will be refunded or released upon completion of the work and inspection by VDOT in accordance with the law. VDOT shall be named as an obligee on the bond or a payee for a check, cash, or revocable letter of credit. If a permit is canceled prior to the beginning of work, the surety shall be refunded or released.

Should the permittee fail to complete the work to the satisfaction of the district administrator's designee, then all or whatever portion of the surety that is required to complete work covered by the permit or to restore the right-of-way to its original condition shall be retained by VDOT.

B. Structure bond. Permittees installing, operating, and maintaining facilities within the highway right-of-way shall secure and maintain a continuous bond. Governmental customers may use a resolution in lieu of a continuous bond. The continuous surety shall be in an amount sufficient to restore the right-of-way in the event of damage or failure. The surety shall remain in full force as long as the facility covered by the permit remains within the right-of-way. A private or commercial entrance does not require a continuous surety. Any other installation may require a continuous surety as determined by the district administrator's designee.

24VAC30-151-740. Exceptions and provisions to the payment of fees and compensation.

E. At the discretion of the Commissioner of Highways, under the provisions of resource sharing as described in 24VAC30-151-30, compensation for the use of the limited access right-of-way may be negotiated and agreed upon through any of the following methods:

1. The mutually agreeable exchange of goods, facilities, or services only;
2. Monetary compensation only; or
3. A combination of both.

The Commissioner of Highways will ensure that the goods or services provided in any mutually agreeable exchange are equal to the monetary compensation amount established for the use and occupancy of the right-of-way.

The following is included to show limitations on what can be considered in terms of changes to the above regulations as VDOT must meet federal requirements;

Federal Regulations

23 CFR 645, Part B

§ 645.201 Purpose.

To prescribe policies and procedures for accommodating utility facilities and private lines on the right-of-way of Federal-aid or direct Federal highway projects.

§ 645.203 Applicability.

This subpart applies to:

- (a) New utility installations within the right-of-way of Federal-aid or direct Federal highway projects,
- (b) Existing utility facilities which are to be retained, relocated, or adjusted within the right-of-way of active projects under development or construction when Federal-aid or direct Federal highway funds are either being or have been used on the involved highway facility. When existing utility installations are to remain in place without adjustments on such projects the transportation department and utility are to enter into an appropriate agreement as discussed in [§ 645.213 of this part](#),
- (c) Existing utility facilities which are to be adjusted or relocated under the provisions of [§ 645.209\(k\)](#), and
- (d) Private lines which may be permitted to cross the right-of-way of a Federal-aid or direct Federal highway project pursuant to State law and regulations and the provisions of this subpart. Longitudinal use of such right-of-way by private lines is to be handled under the provisions of [23 CFR 1.23\(c\)](#).

§ 645.205 Policy.

- (a) Pursuant to the provisions of [23 CFR 1.23](#), it is in the public interest for utility facilities to be accommodated on the right-of-way of a Federal-aid or direct Federal highway project when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations.
- (b) Since by tradition and practice highway and utility facilities frequently coexist within common right-of-way or along the same transportation corridors, it is essential in such

situations that these public service facilities be compatibly designed and operated. In the design of new highway facilities consideration should be given to utility service needs of the area traversed if such service is to be provided from utility facilities on or near the highway. Similarly the potential impact on the highway and its users should be considered in the design and location of utility facilities on or along highway right-of-way. Efficient, effective and safe joint highway and utility development of transportation corridors is important along high speed and high volume roads, such as major arterials and freeways, particularly those approaching metropolitan areas where space is increasingly limited. Joint highway and utility planning and development efforts are encouraged on Federal-aid highway projects.

(c) The manner in which utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project can materially affect the highway, its safe operation, aesthetic quality, and maintenance. Therefore, it is necessary that such use and occupancy, where authorized, be regulated by transportation departments in a manner which preserves the operational safety and the functional and aesthetic quality of the highway facility. This subpart shall not be construed to alter the basic legal authority of utilities to install their facilities on public highways pursuant to law or franchise and reasonable regulation by transportation departments with respect to location and manner of installation.

(d) When utilities cross or otherwise occupy the right-of-way of a direct Federal or Federal-aid highway project on Federal lands, and when the right-of-way grant is for highway purposes only, the utility must also obtain and comply with the terms of a right-of-way or other occupancy permit for the Federal agency having jurisdiction over the underlying land.

§ 645.207 Definitions.

For the purpose of this regulation, the following definitions shall apply:

Aesthetic.quality —those desirable characteristics in the appearance of the highway and its environment, such as harmony between or blending of natural and manufactured objects in the environment, continuity of visual form without distracting interruptions, and simplicity of designs which are desirably functional in shape but without clutter.

Border.area —the area between the traveled way and the right-of-way line.

Clear.roadside.policy —that policy employed by a transportation department to provide a clear zone in order to increase safety, improve traffic operations, and enhance the aesthetic quality of highways by designing, constructing and maintaining highway roadsides as wide, flat, and rounded as practical and as free as practical from natural or manufactured hazards such as trees, drainage structures, nonyielding sign supports,

highway lighting supports, and utility poles and other ground-mounted structures. The policy should address the removal of roadside obstacles which are likely to be associated with accident or injury to the highway user, or when such obstacles are essential, the policy should provide for appropriate countermeasures to reduce hazards. Countermeasures include placing utility facilities at locations which protect out-of-control vehicles, using breakaway features, using impact attenuation devices, or shielding. In all cases full consideration shall be given to sound engineering principles and economic factors.

Clear.zone —the total roadside border area starting at the edge of the traveled way, available for safe use by errant vehicles. This area may consist of a shoulder, a recoverable slope, a non-recoverable slope, and/or the area at the toe of a non-recoverable slope available for safe use by an errant vehicle. The desired width is dependent upon the traffic volumes and speeds, and on the roadside geometry. The current edition of the AASHTO “Roadside Design Guide” should be used as a guide for establishing clear zones for various types of highways and operating conditions. This publication is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in [49 CFR part 7](#). Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street, NW., Washington, D.C. 20001, or electronically at <http://www.aashto.org>;

Direct.Federal.highway.projects —those active or completed highway projects such as projects under the Federal Lands Highways Program which are under the direct administration of the Federal Highway Administration (FHWA)

Federal_aid.highway.projects —those active or completed highway projects administered by or through a State transportation department which involve or have involved the use of Federal-aid highway funds for the development, acquisition of right-of-way, construction or improvement of the highway or related facilities, including highway beautification projects under [23 U.S.C. 319](#), Landscaping and Scenic Enhancement.

Freeway —a divided arterial highway with full control of access.

Highway —any public way for vehicular travel, including the entire area within the right-of-way and related facilities constructed or improved in whole or in part with Federal-aid or direct Federal highway funds.

Transportation.department —that department, agency, commission, board, or official of any State or political subdivision thereof, charged by its law with the responsibility for highway administration.

Private.lines —privately owned facilities which convey or transmit the commodities outlined in the definition of utility.facility of this section, but devoted exclusively to private use.

Right_of_way —real property, or interests therein, acquired, dedicated or reserved for the construction, operation, and maintenance of a highway in which Federal-aid or direct Federal highway funds are or have been involved in any stage of development. Lands acquired under [23 U.S.C. 319](#) shall be considered to be highway right-of-way.

State.transportation.department —the transportation department of one of the 50 States, the District of Columbia, or Puerto Rico.

Use.and.occupancy.agreement —the document (written agreement or permit) by which the transportation department approves the use and occupancy of highway right-of-way by utility facilities or private lines.

Utility.facility —privately, publicly or cooperatively owned line, facility, or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any substantially owned or controlled subsidiary. For the purposes of this part, the term includes those utility-type facilities which are owned or leased by a government agency for its own use, or otherwise dedicated solely to governmental use. The term utility includes those facilities used solely by the utility which are a part of its operating plant.

§ 645.209 General requirements.

(a) Safety; Highway safety and traffic safety are of paramount, but not of sole, importance when accommodating utility facilities within highway right-of-way. Utilities provide an essential public service to the general public. Traditionally, as a matter of sound economic public policy and law, utilities have used public road right-of-way for transmitting and distributing their services. The lack of sufficient right-of-way width to accommodate utilities outside the desirable clear zone, in and of itself, is not a valid reason to preclude utilities from occupying the highway right-of-way. However, due to the nature and volume of highway traffic, the effect of such joint use on the traveling public must be carefully considered by transportation departments before approval of utility use of the right-of-way of Federal-aid or direct Federal highway projects is given. Adjustments in the operating characteristics of the utility or the highway or other special efforts may be necessary to increase the compatibility of utility-highway joint use. The possibility of this joint use

should be a consideration in establishing right-of-way requirements for highway projects. In any event, the design, location, and manner in which utilities use and occupy the right-of-way of Federal-aid or direct Federal highway projects must conform to the clear roadside policies for the highway involved and otherwise provide for a safe traveling environment as required by [23 U.S.C. 109\(l\)\(1\)](#).

(b) New.above.ground.installations; On Federal-aid or direct Federal highway projects, new above ground utility installations, where permitted, shall be located as far from the traveled way as possible, preferably along the right-of-way line. No new above ground utility installations are to be allowed within the established clear zone of the highway unless a determination has been made by the transportation department that placement underground is not technically feasible or is unreasonably costly and there are no feasible alternate locations. In exceptional situations when it is essential to locate such above ground utility facilities within the established clear zone of the highway, appropriate countermeasures to reduce hazards shall be used. Countermeasures include placing utility facilities at locations which protect or minimize exposure to out-of-control vehicles, using breakaway features, using impact attenuation devices, using delineation, or shielding.

(c) Installations.within.freeways;

(1) Each State transportation department shall submit an accommodation plan in accordance with [§§ 645.211](#) and [645.215](#) which addresses how the State transportation department will consider applications for longitudinal utility installations within the access control lines of a freeway. This includes utility installations within interchange areas which must be constructed or serviced by direct access from the main lanes or ramps. If a State transportation department elects to permit such use, the plan must address how the State transportation department will oversee such use consistent with this subpart, Title 23 U.S.C., and the safe and efficient use of the highways.

(2) Any accommodation plan shall assure that installations satisfy the following criteria:

(i) The effects utility installations will have on highway and traffic safety will be ascertained, since in no case shall any use be permitted which would adversely affect safety.

(ii) The direct and indirect environmental and economic effects of any loss of productive agricultural land or any productivity of any agricultural land which would result from the disapproval of the use of such right-of-way for accommodation of such utility facility will be evaluated.

(iii) These environmental and economic effects together with any interference with or impairment of the use of the highway in such right-of-way which would result from the use of such right-of-way for the accommodation of such utility facility will be considered.

(iv) [Reserved]

(v) A utility strip will be established along the outer edge of the right-of-way by locating a utility access control line between the proposed utility installation and the through roadway and ramps. Existing fences should be retained and, except along sections of freeways having frontage roads, planned fences should be located at the freeway right-of-way line. The State or political subdivision is to retain control of the utility strip right-of-way including its use by utility facilities. Service connections to adjacent properties shall not be permitted from within the utility strip.

(3) Nothing in this part shall be construed as prohibiting a transportation department from adopting a more restrictive policy than that contained herein with regard to longitudinal utility installations along freeway right-of-way and access for constructing and/or for servicing such installations.

(d) Uniform.policies.and.procedures; For a transportation department to fulfill its responsibilities to control utility use of Federal-aid highway right-of-way within the State and its political subdivisions, it must exercise or cause to be exercised, adequate regulation over such use and occupancy through the establishment and enforcement of reasonably uniform policies and procedures for utility accommodation.

(e) Private.lines; Because there are circumstances when private lines may be allowed to cross or otherwise occupy the right-of-way of Federal-aid projects, transportation departments shall establish uniform policies for properly controlling such permitted use. When permitted, private lines must conform to the provisions of this part and the provisions of [23 CFR 1.23\(c\)](#) for longitudinal installations.

(f) Direct.Federal.highway.projects; On direct Federal highway projects, the FHWA will apply, or cause to be applied, utility and private line accommodation policies similar to those required on Federal-aid highway projects. When appropriate, agreements will be entered into between the FHWA and the transportation department or other government agencies to ensure adequate control and regulation of use by utilities and private lines of the right-of-way on direct Federal highway projects.

(g) Projects.where.state.lacks.authority; On Federal-aid highway projects where the State transportation department does not have legal authority to regulate highway use by utilities and private lines, the State transportation department must enter into formal agreements with those local officials who have such authority. The agreements must provide for a

degree of protection to the highway at least equal to the protection provided by the State transportation department's utility accommodation policy approved under the provisions of [§ 645.215\(b\) of this part](#). The project agreement between the State transportation department and the FHWA on all such Federal-aid highway projects shall contain a special provision incorporating the formal agreements with the responsible local officials.

(h) Scenic areas; New utility installations, including those needed for highway purposes, such as for highway lighting or to serve a weigh station, rest area or recreation area, are not permitted on highway right-of-way or other lands which are acquired or improved with Federal-aid or direct Federal highway funds and are located within or adjacent to areas of scenic enhancement and natural beauty. Such areas include public park and recreational lands, wildlife and waterfowl refuges, historic sites as described in [23 U.S.C. 138](#), scenic strips, overlooks, rest areas and landscaped areas. The State transportation department may permit exceptions provided the following conditions are met:

(1) New underground or aerial installations may be permitted only when they do not require extensive removal or alteration of trees or terrain features visible to the highway user or impair the aesthetic quality of the lands being traversed.

(2) Aerial installations may be permitted only when:

(i) Other locations are not available or are unusually difficult and costly, or are less desirable from the standpoint of aesthetic quality,

(ii) Placement underground is not technically feasible or is unreasonably costly, and

(iii) The proposed installation will be made at a location, and will employ suitable designs and materials, which give the greatest weight to the aesthetic qualities of the area being traversed. Suitable designs include, but are not limited to, self-supporting armless, single-pole construction with vertical configuration of conductors and cable.

(3) For new utility installations within freeways, the provisions of [paragraph \(c\)](#) of this section must also be satisfied.

(i) Joint-use agreements; When the utility has a compensable interest in the land occupied by its facilities and such land is to be jointly occupied and used for highway and utility purposes, the transportation department and utility shall agree in writing as to the obligations and responsibilities of each party. Such joint-use agreements shall incorporate the conditions of occupancy for each party, including the rights vested in the transportation department and the rights and privileges retained by the utility. In any event, the interest to be acquired by or vested in the transportation department in any portion of the right-of-way of a Federal-aid or direct Federal highway project to be vacated, used or occupied by

utilities or private lines, shall be adequate for the construction, safe operation, and maintenance of the highway project.

(j) Traffic.control.plan; Whenever a utility installation, adjustment or maintenance activity will affect the movement of traffic or traffic safety, the utility shall implement a traffic control plan and utilize traffic control devices as necessary to ensure the safe and expeditious movement of traffic around the work site and the safety of the utility work force in accordance with procedures established by the transportation department. The traffic control plan and the application of traffic control devices shall conform to the standards set forth in the current edition of the “Manual on Uniform Traffic Control Devices” (MUTCD) and [23 CFR part 630, subpart J](#). This publication is available for inspection and copying from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in [49 CFR part 7](#).

(k) Corrective.measures; When the transportation department determines that existing utility facilities are likely to be associated with injury or accident to the highway user, as indicated by accident history or safety studies, the transportation department shall initiate or cause to be initiated in consultation with the affected utilities, corrective measures to provide for a safer traffic environment. The corrective measures may include changes to utility or highway facilities and should be prioritized to maximum safety benefits in the most cost-effective manner. The scheduling of utility safety improvements should take into consideration planned utility replacement or upgrading schedules, accident potential, and the availability of resources. It is expected that the requirements of this paragraph will result in an orderly and positive process to address the identified utility hazard problems in a timely and reasonable manner with due regard to the effect of the corrective measures on both the utility consumer and the road user. The type of corrective measures are not prescribed. Any requests received involving Federal participation in the cost of adjusting or relocating utility facilities pursuant to this paragraph shall be subject to the provisions of [23 CFR part 645, subpart A](#), Utility Relocations, Adjustments and Reimbursement, and [23 CFR part 924](#), Highway Safety Improvement Program.

(l) Wetlands; The installation of privately owned lines or conduits on the right-of-way of Federal-aid or direct Federal highway projects for the purpose of draining adjacent wetlands onto the highway right-of-way is considered to be inconsistent with Executive Order 11990, Protection of Wetlands, dated May 24, 1977, and shall be prohibited.

(m) Utility.determination; In determining whether a proposed installation is a utility or not, the most important consideration is how the STD views it under its own State laws and/or regulations.

§ 645.211 State transportation department accommodation policies.

The FHWA should use the current editions of the AASHTO publications, “A Guide for Accommodating Utilities Within Highway Right-of-Way” and “Roadside Design Guide” to assist in the evaluation of adequacy of STD utility accommodation policies. These publications are available for inspection from the FHWA Washington Headquarters and all FHWA Division Offices as prescribed in [49 CFR part 7](#). Copies of current AASHTO publications are available for purchase from the American Association of State Highway and Transportation Officials, Suite 225, 444 North Capitol Street NW., Washington, DC 20001, or electronically at <http://www.aashto.org>; At a minimum, such policies shall make adequate provisions with respect to the following:

- (a) Utilities must be accommodated and maintained in a manner which will not impair the highway or adversely affect highway or traffic safety. Uniform procedures controlling the manner, nature and extent of such utility use shall be established.
- (b) Consideration shall be given to the effect of utility installations in regard to safety, aesthetic quality, and the costs or difficulty of highway and utility construction and maintenance.
- (c) The State transportation department's standards for regulating the use and occupancy of highway right-of-way by utilities must include, but are not limited to, the following:
 - (1) The horizontal and vertical location requirements and clearances for the various types of utilities must be clearly stated. These must be adequate to ensure compliance with the clear roadside policies for the particular highway involved.
 - (2) The applicable provisions of government or industry codes required by law or regulation must be set forth or appropriately referenced, including highway design standards or other measures which the State transportation department deems necessary to provide adequate protection to the highway, its safe operation, aesthetic quality, and maintenance.
 - (3) Specifications for and methods of installation; requirements for preservation and restoration of highway facilities, appurtenances, and natural features and vegetation on the right-of-way; and limitations on the utility's activities within the right-of-way including installation within areas set forth by [§ 645.209\(h\) of this part](#) should be prescribed as necessary to protect highway interests.
 - (4) Measures necessary to protect traffic and its safe operation during and after installation of facilities, including control-of-access restrictions, provisions for rerouting or detouring traffic, traffic control measures to be employed, procedures for utility traffic control plans,

limitations on vehicle parking and materials storage, protection of open excavations, and the like must be provided.

(5) A State transportation department may deny a utility's request to occupy highway right-of-way based on State law, regulation, or ordinances or the State transportation department's policy. However, in any case where the provisions of this part are to be cited as the basis for disapproving a utility's request to use and occupy highway right-of-way, measures must be provided to evaluate the direct and indirect environmental and economic effects of any loss of productive agricultural land or any impairment of the productivity of any agricultural land that would result from the disapproval. The environmental and economic effects on productive agricultural land together with the possible interference with or impairment of the use of the highway and the effect on highway safety must be considered in the decision to disapprove any proposal by a utility to use such highway right-of-way.

(d) Compliance with applicable State laws and approved State transportation department utility accommodation policies must be assured. The responsible State transportation department's file must contain evidence of the written arrangements which set forth the terms under which utility facilities are to cross or otherwise occupy highway right-of-way. All utility installations made on highway right-of-way shall be subject to written approval by the State transportation department. However, such approval will not be required where so provided in the use and occupancy agreement for such matters as utility facility maintenance, installation of service connections on highways other than freeways, or emergency operations.

(e) The State transportation department shall set forth in its utility accommodation plan detailed procedures, criteria, and standards it will use to evaluate and approve individual applications of utilities on freeways under the provisions of [§ 645.209\(c\) of this part](#). The State transportation department also may develop such procedures, criteria and standards by class of utility. In defining utility classes, consideration may be given to distinguishing utility services by type, nature or function and their potential impact on the highway and its user.

(f) The means and authority for enforcing the control of access restrictions applicable to utility use of controlled access highway facilities should be clearly set forth in the State transportation department plan.

(Information collection requirements in paragraphs (a), (b) and (c) were approved under control number 2125-0522, and paragraph (d) under control number 2125-0514)

[[50 FR 20354](#), May 15, 1985, as amended at [53 FR 2834](#), Feb. 2, 1988; [55 FR 25828](#), June 25, 1990; [65 FR 70312](#), Nov. 22, 2000]

§ 645.213 Use and occupancy agreements (permits).

The written arrangements, generally in the form of use and occupancy agreements setting forth the terms under which the utility is to cross or otherwise occupy the highway right-of-way, must include or incorporate by reference:

- (a) The transportation department standards for accommodating utilities. Since all of the standards will not be applicable to each individual utility installation, the use and occupancy agreement must, as a minimum, describe the requirements for location, construction, protection of traffic, maintenance, access restriction, and any special conditions applicable to each installation.
- (b) A general description of the size, type, nature, and extent of the utility facilities being located within the highway right-of-way.
- (c) Adequate drawings or sketches showing the existing and/or proposed location of the utility facilities within the highway right-of-way with respect to the existing and/or planned highway improvements, the traveled way, the right-of-way lines and, where applicable, the control of access lines and approved access points.
- (d) The extent of liability and responsibilities associated with future adjustment of the utilities to accommodate highway improvements.
- (e) The action to be taken in case of noncompliance with the transportation department's requirements.
- (f) Other provisions as deemed necessary to comply with laws and regulations.

(Approved by the Office of Management and Budget under control number 2125-0522)

§ 645.215 Approvals.

- (a) Each State transportation department shall submit a statement to the FHWA on the authority of utilities to use and occupy the right-of-way of State highways, the State transportation department's power to regulate such use, and the policies the State transportation department employs or proposes to employ for accommodating utilities within the right-of-way Federal-aid highways under its jurisdiction. Statements previously submitted and approved by the FHWA need not be resubmitted provided the statement adequately addresses the requirements of this part. When revisions are deemed necessary the changes to the previously approved statement may be submitted separately to the FHWA for approval. The State transportation department shall include similar information

on the use and occupancy of such highways by private lines where permitted. The State shall identify those areas, if any, of Federal-aid highways within its borders where the State transportation department is without legal authority to regulate use by utilities. The statement shall address the nature of the formal agreements with local officials required by [§ 645.209\(g\) of this part](#). It is expected that the statements required by this part or necessary revisions to previously submitted and approved statements will be submitted to FHWA within 1 year of the effective date of this regulation.

(b) Upon determination by the FHWA that a State transportation department's policies satisfy the provisions of [23 U.S.C. 109](#), [111](#), and [116](#), and [23 CFR 1.23](#) and [1.27](#), and meet the requirements of this regulation, the FHWA will approve their use on Federal-aid highway projects in that State

(c) Any changes, additions or deletions the State transportation department proposes to the approved policies are subject to FHWA approval.

(d) When a utility files a notice or makes an individual application or request to a STD to use or occupy the right-of-way of a Federal-aid highway project, the STD is not required to submit the matter to the FHWA for prior concurrence, except when the proposed installation is not in accordance with this regulation or with the STD's utility accommodation policy approved by the FHWA for use on Federal-aid highway projects.

(e) The State transportation department's practices under the policies or agreements approved under [§ 645.215\(b\) of this part](#) shall be periodically reviewed by the FHWA.