



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Transportation (Commonwealth Transportation Board)
Virginia Administrative Code (VAC) citation	24VAC30-72
Regulation title	Access Management Regulations: Principal Arterials
Action title	Revisions to Land Development Regulations from 2011 Legislative Actions
Final agency action date	October 19, 2011, November 3 and 10, 2011
Document preparation date	November 29, 2011

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

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

During the 2011 session of the General Assembly, Chapters 647, 870, 888, 104 and 164 which relate to or impact the content of land development regulations promulgated by the Commonwealth Transportation Board, VDOT, or the Commissioner, were enacted. These regulations include:

- 24VAC30-72 – Access Management Regulations: Principal Arterials
- 24VAC30-73 – Access Management Regulations: Minor Arterials, Collectors, and Local Streets
- 24VAC30-92 – Secondary Street Acceptance Requirements
- 24VAC30-155 – Traffic Impact Analysis Regulations

In response to Chapter 647, which repealed subsection C of § 15.2-2222.1, the Traffic Impact Analysis Regulations (TIA) have been revised to remove the requirements for VDOT to review subdivision plats,

site plans, and plans for development. This legislation did not impact the agency's review of comprehensive plans, comprehensive plan amendments, and rezoning. VDOT made changes to the TIA Regulations pursuant to a specific mandate in the second enactment clause of the legislation. The Chapter 647 regulatory revisions are to become effective no later than December 31, 2011 and are explicitly exempt from the Administrative Process Act (APA).

Chapter 870 requires VDOT to:

- Review and adopt any appropriate revisions to the TIA Regulations prior to November 30, 2011;
- Assist the Commonwealth Transportation Board (CTB) to research and make recommendations related to the adoption of revisions to the Secondary Street Acceptance Requirements (SSAR) prior to November 30, 2011; and
- Review and adopt revisions to the Access Management Regulations: Principal Arterials and Access Management Regulations: Minor Arterials, Collectors, and Local Streets by November 11, 2011, concerning their application to entrances for family subdivisions.

The effective date for the related regulatory revisions shall be on or before January 1, 2012. VDOT has set an effective date of December 31, 2011 for regulatory changes made pursuant to Chapters 647, 870, and 888 to meet the mandates.

Furthermore, to comply with Chapter 870's mandates, VDOT created a Technical Committee and an external Policy Advisory Committee to gather and analyze public input, review current land development activity as it related to the four regulations, and propose revisions to the regulations. VDOT also contacted individuals who previously submitted comments to the agency concerning land development regulations, and held a public meeting and live online broadcast to discuss the proposed changes to the regulations and to collect additional public comments.

Chapter 888 also affects the TIA Regulations. This legislation states that VDOT shall complete a "more limited" review of rezoning requests when the proposed use is consistent with the current locality comprehensive plan designation and the comprehensive plan was reviewed previously pertaining to the TIA Regulations. Although VDOT will continue to review comprehensive plans, related amendments, and proposed rezoning requests, it revised the TIA Regulations to reflect this less stringent approach to such reviews.

Chapters 104 and 164 of the 2011 Acts of Assembly affect the access management regulations. These two Acts repeal the statutory provisions addressing regulation of drive-in theaters (§ 33.1-12(15)). Since the statutory provisions specifically addressing these entrances have been repealed and these facilities can be treated the same as other facilities with commercial entrances, the access management regulations were revised as technical corrections to eliminate the sections relating to entrances for drive-in theaters.

Because the amendments are being made to the regulations pursuant to the 2011 Acts described above, as well as amendments made only to the Access Management Regulations due to their limited mandate under § 2.2-4006 A 3 of the Code for technical corrections and § 2.2-4006 A 4 due to changes in state law, two different effective dates apply. For the comprehensive amendments mandated pursuant to Chapters 647, 870, and 888 of the 2011 Acts of Assembly, an effective date of December 31, 2011, shall apply, as stated previously. For those amendments to the Access Management Regulations, which include revisions other than those connected with revisions dealing with family subdivision entrances, an effective date of January 18, 2011 shall apply, which is 30 days after the publication date in *The Virginia Register*.

Significant changes made to each of the regulations are described below. Additional minor changes to update references to forms and technical documents to ensure consistency among the regulations examined were also made where necessary.

Access Management Regulations: Principal Arterials (24VAC30-72) and Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC 30-73):

- In connection with Chapter 870's requirements, a low volume commercial entrance category was added to the regulation for entrances associated with land uses that do not generate high traffic volumes, but volumes above those expected from private entrances (driveways serving one to two homes). The lower-cost design standards for private entrances will apply to this new type of entrance, but the entrance will need to meet a stopping sight distance requirement. (See Definitions, 24 VAC30-72-80 and 24 VAC 30-73-80.) For clarity, text in the catchlines and elsewhere in the regulations was amended to clarify how particular provisions are to be applied to low volume commercial entrances, commercial entrances, and private entrances.

As the character of traffic created by family subdivisions does not differ from any other entrances, setting out a specific entrance just for family subdivisions is not logical from a safety standpoint. Family subdivisions generally consist of up to five lots, which can be expected to generate 50 trips, and 50 trips is already the established breakpoint for paving eligibility on VDOT secondary highways. Stopping sight distance is the minimum required by American Association of State Highway and Transportation Officials (AASHTO) national standards at entrances, and a new document, "Trip Generation, 8th Edition, 2008," was added to both regulations to address the revision to family entrance provisions.

Although not explicitly covered by Chapter 870's exemption from the APA, VDOT believes that the additional changes made to the Access Management Regulations merit exemption because they are technical corrections, and are covered by §2.2-4006 A 3 of the *Code*, which exempts "corrections of technical errors" from Article 2 provisions.

Sections in both of the access management regulations addressing drive-in theaters were deleted because the statutory provisions specifically addressing regulation of these facilities (§ 33.1-12(15)) was repealed by Chapters 104 and 164 of the 2011 Acts of Assembly. Since the statutory provisions specifically addressing these entrances have been repealed and these facilities can be treated the same as other facilities with commercial entrances, it is no longer necessary to address them separately in the regulations.

Secondary Street Acceptance Requirements (24VAC30-92) (SSAR):

In connection with Chapter 870's requirements:

- The "connectivity index" requirements have been eliminated from the SSAR, because many parties outside of VDOT found the connectivity index confusing and complicated; many also questioned if use of the index actually increased external connectivity.
- The "area types" classification scheme has also been eliminated, because it was directly tied to connectivity index requirements, which were eliminated.
- The requirements associated with pedestrian accommodations have been modified, based on input received. The majority of comments indicated that the current lot sizes associated with pedestrian accommodations are too large for many new developments, particularly in more rural counties and hence, changes have been incorporated to address those and similar comments and issues.

- For connectivity enhancements, a requirement was incorporated for additional external connection or connections when certain dwelling unit or vehicle per day (VPD) thresholds per network addition are met. Additional external connections are required when the network addition contains over 200 dwelling units or the use generates over 2,000 VPD. With the elimination of the connectivity index, another connectivity standard was necessary in order to ensure adequate “connectivity for the current and future transportation network” as required in §33.1-70.3 of the *Code of Virginia*.
- An amendment to the regulations allow the District Administrator’s Designee (rather than the District Administrator) to waive or modify certain aspects or requirements relating to multiple connections and/or additional external connections when specific and commonly occurring physical situations exist. Since the original effective date of the SSAR in 2009, VDOT has gathered data on the occurrence of regulation exceptions. The majority of exceptions granted relate to required connections. The specific situations listed in the proposed SSAR include the majority of situations today that result in approval of exceptions to connectivity requirements. By providing the Designee with approval authority, a request seeking approval of an exception will receive the same thorough review, but the time needed for a review should be reduced.
- The VDOT review period for waivers and exceptions was reduced from 45 calendar days to 30 calendar days for connectivity exceptions and appeals. This change has been incorporated as a result of comments received during the input process. VDOT will be able to accommodate this reduction in the review period.

Traffic Impact Analysis Regulations (24VAC30-155):

The following regulatory changes were made based on amendments to Va. Code § 15.2-2222.1:

- Reviews for site plans, subdivision plats, and plans of development were deleted due to repeal by Chapter 647 of subsection C of §15.2-2222.1 which required local submittal of these land development proposals to VDOT for review. The entire section relating to these reviews, 24VAC30-155-50, was deleted as a result.
- Traffic impact analysis study criteria were reduced in scope for rezoning proposals due to amendment of §15.2-2222.1 by Chapter 888 that required VDOT’s review of rezoning proposals to be more limited in nature and scope if the rezoning is consistent with a locality’s comprehensive plan that has been reviewed pursuant to the regulations.

The following regulatory changes resulted from the assessment required by Chapter 870:

- The trip generation threshold requiring submittal of a rezoning to VDOT was increased from 100 peak hour trips for residential and 2,500 daily trips for other land uses to a new 5,000 vehicle trips per day threshold for all land uses due to a requirement in §15.2-2222.1 directing VDOT to review rezoning proposals that will substantially affect transportation on state highways. The submittal threshold has been raised to address/reshift focus to larger developments of a more regional scale.
- An amendment was added to allow rezoning applicants to submit a traffic impact analysis study prepared according to locality requirements, provided the locality’s requirements have been certified by VDOT as meeting acceptable standards of professional practice. A developer will not have to prepare separate traffic impact studies according to locality requirements and according to VDOT requirements. Once a locality’s traffic impact statement requirements have been certified by VDOT, the local study can satisfy both purposes.

- An amendment stipulates that rezoning proposal is exempt from the regulations when it (a) involves no changes in the land uses allowed under the current zoning, or (b) results in lower trip generation than land uses allowed by right (except governmental uses) under the current zoning. This amendment was made to bring the regulation more in line with statutory intent of requiring Traffic Impact studies in situations that would substantially affect state highways. Applying traffic impact regulations to a rezoning proposal that will generate the same or less traffic than what could occur if the property was developed by-right (uses allowed under the current zoning) would conflict with the legislative intent.
- A provision was added requiring VDOT to schedule a meeting with the locality and the developer to discuss the preparation of a traffic impact study on a proposed rezoning within 60 days of receipt of a request for a scoping meeting. The deadline helps assure that the arrangements for a scoping meeting to discuss a rezoning proposal are handled in a timely manner.
- An amendment directs VDOT to provide the rezoning applicant the opportunity and time to make modifications to information submitted under the regulations before returning the package to the locality and requiring its formal resubmission. The regulations will allow, when possible, revisions to submittals to be accommodated in a manner that does not unnecessarily extend the local development review process.
- The methodology for preparing a traffic impact analysis study has been revised. The methodology was evaluated based on three years of experience, utilizing the current methodology, as well as new concepts and best practices in traffic impact analysis.

The CTB was required to adopt the revisions to the SSAR regulation prior to November 30, 2011 in order to retain its exempt status related to the Administrative Process Act. The CTB unanimously approved the SSAR as presented during its October 19, 2011 meeting. The Commissioner approved Chapter 647 and Chapter 870 changes to both Access Management Regulations and the TIA Regulations on November 3, 2011 and November 10, 2011, in advance of the statutory deadline of November 11, 2011.

The amendments made to each regulation listed below are exempt from either the entire APA or Article 2 of the APA as described below:

- Access Management Regulations: Principal Arterials – amendments related to the application of the provisions to entrances for family subdivisions are exempt from the APA pursuant to Chapter 870 of the 2011 Acts of Assembly; other changes to correct technical errors are exempt from Article 2 of the APA pursuant to §2.2-4006 A. 3; and changes related to Chapters 104 and 164 of the 2011 Acts of Assembly are exempt from Article 2 of the APA pursuant to §2.2-4006 A.4 as well;
- Access Management Regulations: Minor Arterials, Collectors, and Local Streets – amendments related to the application of the provisions to entrances for family subdivisions are exempt from the APA pursuant to Chapter 870 of the 2011 Acts of Assembly; other changes to correct technical errors are exempt from Article 2 of the APA pursuant to §2.2-4006 A 3; and changes related to Chapters 104 and 164 of the 2011 Acts of Assembly are exempt from Article 2 of the APA pursuant to §2.2-4006 A.4 as well;
- Secondary Street Acceptance Requirements - amendments are exempt from the APA pursuant to Chapter 870 of the 2011 Acts of Assembly;
- Traffic Impact Analysis Regulations – amendments concerning reviews for site plans, subdivision plats, and plans of development were deleted due to repeal of subsection C of §15.2-2222.1 by Chapter 647 of the 2011 Acts of Assembly, which also confers an exemption from the APA; amendments made pursuant to Chapters 870 and 888 of the

2011 Acts of Assembly are exempt because Chapter 870 contains a mandate to “review and adopt any appropriate revisions” to the regulations, and the third enactment clauses of Chapters 527 and 563 of the 2006 Acts, which were not amended by Chapter 870, confer exemptions from the APA.

The Office of the Attorney General (OAG) reviewed the amended regulations discussed above, and determined that VDOT and the Commonwealth Transportation Board have the authority to amend these regulations under Chapters 647, 870, 888, 104, and 164 of the 2011 Acts of Assembly, as well as the provisions of § 2.2-4006 A 3 (corrections of technical errors) and § 33.1-12 (general authority to adopt regulations) of the Code of Virginia. The OAG also determined that under Chapters 647, 870, and 888 of the 2011 Acts of Assembly, as well as Chapters 527 and 563 of the 2006 Acts of Assembly, and pursuant to the provision of § 2.2-4006 A 3 (corrections of technical errors), and § 2.2-4006 A 4 (necessity to conform to state statutory law where no agency discretion is involved), these amendments are exempt from the requirements of the Virginia Administrative Process Act.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On October 19, 2011, the Commonwealth Transportation Board approved revisions to the Secondary Street Acceptance Requirements (24VAC30-92).
 On November 3 and 10, 2011, the Commissioner of Highways approved amendments to the following regulations: the Access Management Regulations: Principal Arterials (24VAC30-72); the Access Management Regulations: Minor Arterials, Collectors, and Local Streets (24VAC30-73); and the Traffic Impact Analysis Regulations (24VAC30-155).

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This regulatory action is expected to have no direct effect on the institution of family and family stability. However, the regulatory revisions will have an indirect benefit to families in the form of a more efficient and safer transportation network in that the regulation is intended to help to reduce traffic congestion and vehicular crash rates and promote efficient movement of goods and people on the state highway system.