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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Virginia Department of Transportation
Virginia Administrative Code (VAC) Chapter citation(s)	24VAC30-121
VAC Chapter title(s)	Comprehensive Roadside Management Program
Action title	Chapter 121 Regulatory Reform and Periodic Review
Date this document prepared	July 13, 2023

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Virginia Department of Transportation (VDOT) is undertaking a comprehensive review of 24VAC30-121, Comprehensive Roadside Management Program. The program established by the regulation, as directed by the legislative mandate from the 2004 General Assembly (SB 260/Chapter 679), enables private businesses, civic organizations, communities, individuals and local governments to improve the appearance and safety of the state-maintained right-of-way by participating in project development, establishment, and maintenance of landscaping activities within the right-of-way. The intent of this action is to remove redundant or obsolete language, with the goal of identifying opportunities for regulatory reduction and streamlining in accordance with Governor Youngkin's Executive Order 19.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

VDOT means the Virginia Department of Transportation.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation, (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”

On July 13, 2023, VDOT approved a Notice of Intended Regulatory Action to review 24VAC30-121 to potentially amend any overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. VDOT is conducting a review of its regulations in accordance with Governor Youngkin’s Executive Order 19.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.

VDOT has the authority to implement a comprehensive roadside management program pursuant to § 33.2-265 of the Code of Virginia.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The regulation addresses opportunities for participation by individuals, communities, and local governments; safety; landscape materials; services; funding; recognition; and appropriate signing. Under the regulation, acknowledgement signs must comply with safety requirements and the criteria for placement for specific highway systems and access type. As such, the Comprehensive Roadside Management Program regulation is necessary for the protection of public health, safety, and welfare.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

No new substantive provisions are being considered.

During its review of the regulation, VDOT is expected to consider the following topics:

1. General
 - a. Review to ensure the regulation comports with statute and applicable federal requirements.
 - b. Focus on making the regulation organized and clear.
 - c. Review for opportunities to reduce or alleviate regulatory burdens.
2. Definitions
 - a. Review definitions, revise and update where appropriate.
3. Documents Incorporated by Reference
 - a. Review use of documents and identify possible opportunities for updating or removal.
4. Forms
 - a. Review use of forms and identify possible opportunities for updating or removal.

The above list is not inclusive of all items that may be considered. Draft regulatory text is not available at this time.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.

The regulation is necessary to allow private businesses, civic organizations, communities, individuals and local governments an opportunity to improve the appearance and safety of the state-maintained right-of-way by participating in the project development, establishment, and maintenance of landscaping activities. As a part of VDOT’s review, alternatives to the current regulatory text will be considered. The Department will also consider the burden on individuals and small businesses for achieving the goals set forth by the regulation.

Periodic Review and Small Business Impact Review Announcement

If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”

In addition, pursuant to the ORM procedures and § 2.2-4007.1 of the *Code of Virginia*, the Department is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare; (ii) minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia, describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

VDOT is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Jo Anne Maxwell, Agency Regulatory Coordinator, 1401 E. Broad St. Richmond, VA 23219, telephone (804) 786-1830, fax (804) 225-4700, JoAnne.Maxwell@VDOT.Virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will not be held following the publication of the proposed stage of this regulatory action.