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Proposed Regulation Agency Background Document

Agency name	Virginia Department of Transportation
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-121
VAC Chapter title(s)	Comprehensive Roadside Management Program
Action title	Chapter 121 Regulatory Reform and Periodic Review
Date this document prepared	October 30, 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The Comprehensive Roadside Management Program established by 24 VAC 30-121 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. VDOT has undertaken a comprehensive review of this regulation. The intent of this action is to remove redundant or obsolete language and to achieve regulatory reduction and streamlining in accordance with Governor Youngkin's Executive Order 19.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

“Department” or “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 conducted a review of its regulations in accordance with Governor Youngkin’s Executive Order 19 (EO 19). As a result of this review, VDOT identified several areas for streamlining within this regulation.

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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The proposed regulatory changes are intended to remove redundant or obsolete language, add clarity, and achieve regulatory reduction and streamlining in accordance with EO 19. 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 remains necessary for the protection of public health, safety, and welfare.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

The proposed amendments will achieve administrative updates, eliminate redundancy, add clarifying language, and bring the text in line with current practice.

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The proposed changes to the regulation benefit the public through removing redundant or outdated language and providing clarity as to current VDOT practice and are not anticipated to present a disadvantage to the public or the Commonwealth.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory changes.

Localities Particularly Affected

Localities are not particularly affected by the regulatory changes.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory changes.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>There are no anticipated costs, savings, fees, or revenues for VDOT resulting from the regulatory changes.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees, or revenues resulting from the regulatory change.</p>	<p>There are no anticipated costs, savings, fees, or revenues for localities resulting from this regulatory action.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>If private businesses, civic organizations, communities, or individuals wish to participate in the Comprehensive Roadside Management Program, they will be affected by the changes.</p>
<p>Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated, and;</p>	<p>N/A</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	
<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.</p>	<p>There are no anticipated costs, savings, fees, or revenues for affected individuals, businesses, or other entities resulting from this regulatory action.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.</p>

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.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

The proposed regulatory changes were identified during a review conducted in accordance with the principles of EO 19. The focus of the review was to reduce overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined regulatory requirements. As such, no alternatives to the proposed changes were identified.

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

The regulation does not adversely impact small businesses. No alternative regulatory methods are applicable, nor were alternative regulatory methods considered.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The proposed changes to the regulation are intended to reduce redundancy and improve clarity of the regulation in alignment with the criteria set out in EO 19 and the ORM procedures. 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. The regulation enables VDOT to protect the public health, safety, and welfare by requiring participants to comply with the terms of the land use permits and the general, site, and design considerations specified in the regulation. The regulation was last reviewed in 2020 and no complaints have been received. The regulation does not overlap or conflict with state or federal law or regulation and it is not overly complex. The regulation does not negatively affect small businesses.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency’s response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Committer	Comment	Agency response

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.

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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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 this stage of this regulatory action.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
121-10	N/A	Section 10 provides the purpose for the regulation.	Amendments will be made to this section to streamline the regulation and eliminate unnecessary text.
121-20	N/A	This section outlines entities eligible for participation and the requirements for contributions.	The restriction that no acknowledgment signs installed pursuant to the program shall remain in place for more than 10 years is proposed to be removed to eliminate inconsistency within the regulation. Other streamlining and clarifying amendments will be made to this section.
121-30	N/A	This section describes the application requirements, including the jurisdictional limitations.	Limited access highways will be excepted from the provision that a local government may apply for a jurisdiction-wide permit to cover all proposed activities occurring within that local government's jurisdictional boundaries on the right-of-way. The local government will also be required to notify

			<p>the Residency prior to the installation of any landscaping under a jurisdiction-wide permit. These changes will ensure consistency with the requirements in 24VAC30-151 regarding activities in limited access right-of-way, as district-wide permits do not apply to limited access highways and maintenance activities within limited access right-of-way require separate permits or authorization.</p> <p>Other streamlining and clarifying amendments will be made to this section.</p>
121-40	N/A	Section 40 requires that projects comply with the Land Use Permit Regulations and the general, site, and design considerations specified in this section.	<p>Under the amendments, the permittee will be required to maintain any permitted areas for the life of the permit instead of in perpetuity. This change addresses potential situations where perpetual maintenance would not be reasonable, such as future construction which removes the landscaping area.</p> <p>The amendments would also allow the project design to include pruning or cutting within highway rights-of-way of vegetation with trunk base diameter no greater than six inches, instead of the four inches currently allowed. This change is to align the regulatory text with similar proposed amendments to 24VAC30-200, Vegetation Control Regulations on State Rights-of-Way.</p> <p>Other streamlining and clarifying amendments will be made to this section.</p>
FORMS	N/A	This section contains the land use permit form relevant to the Comprehensive Roadside Management Program.	This form will be updated.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

Table 2: Promulgating New VAC Chapter(s) without Repeal and Replace

New chapter-section number	New requirements to be added to VAC	Other regulations and laws that apply	Change, intent, rationale, and likely impact of new requirements

If the regulatory change is replacing an **emergency regulation**, and the proposed regulation is identical to the emergency regulation, complete Table 1 and/or Table 2, as described above.

If the regulatory change is replacing an **emergency regulation**, but changes have been made since the emergency regulation became effective, also complete Table 3 to describe the changes made since the emergency regulation.

Table 3: Changes to the Emergency Regulation

Emergency chapter-section number	New chapter-section number, if applicable	Current <u>emergency</u> requirement	Change, intent, rationale, and likely impact of new or changed requirements since emergency stage