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Proposed Regulation Agency Background Document

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-21
VAC Chapter title(s)	General Rules and Regulations of the Commonwealth Transportation Board
Action title	Chapter 21 Regulatory Reform and Periodic Review
Date this document prepared	January 23, 2025

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.

General Rules and Regulations of the Commonwealth Transportation Board, 24VAC30-21, provides for the Commonwealth Transportation Board (CTB) to regulate generally the activities that occur on highway right of way under the jurisdiction of the CTB and the Virginia Department of Transportation (VDOT), dictating that uses other than travel are subject to the land use permit framework and that access/entrances are subject to the access management framework, and providing for regulation of other uses of the highway systems. The CTB has undertaken a comprehensive review of 24VAC30-21. 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 (EO 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.

CTB means the Commonwealth Transportation Board.

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 16, 2024, the CTB approved a Notice of Intended Regulatory Action to review 24VAC30-21 to potentially amend any overly burdensome requirements, remove any obsolete information, and provide more clarity with streamlined text. The CTB conducted a review of this regulation in accordance with Governor Youngkin’s Executive Order 19. As a result of this review, the CTB identified several areas for streamlining within this regulation. The CTB approved the proposed amendments on December 4, 2024.

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.

The Commonwealth Transportation Board has general authority to adopt regulations “for the protection of and covering traffic on and for the use of systems of state highways” and has “the authority to add to, amend, or repeal such regulations” pursuant to § 33.2-210 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 Executive Order 19. Changes include the removal of text which is duplicative of that contained in other CTB or VDOT regulations. These proposed amendments therefore protect the health, safety, and welfare of citizens by reducing confusion for regulated entities by removing text which is unnecessary and by ensuring regulatory requirements are only associated with the most appropriate regulation and not unnecessarily restated in multiple regulations.

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.

In addition to streamlining the regulatory text and removing requirements restated in other regulatory chapters, further clarity will be added to definitions in section 10 and to the restrictions applying to activities occurring on bridges forming a part of the system of state highways in section 20.

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 primary benefit to the public through removing redundant language, streamlining regulatory text, and providing additional clarity is to ensure the regulation is easy to read and understand. These changes 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

State fire and law enforcement agencies may be affected by the added exception for fire and law enforcement vehicles or vessels from the regulation’s provisions concerning activities occurring on bridges forming a part of the state system of highways.

Localities Particularly Affected

Local fire and law enforcement agencies may be affected by the added exception for fire and law enforcement vehicles or vessels from the regulation's provisions concerning activities occurring on bridges forming a part of the state system of highways.

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

<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.	There are no anticipated costs, savings, fees, or revenues for VDOT resulting from the regulatory change.
<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.	There are no anticipated costs, savings, fees, or revenues for other state agencies resulting from this regulatory action.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.

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.

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

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.

Description of the individuals, businesses, or other entities likely to be affected by the	No other entities are expected to be particularly affected by the proposed changes.
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regulatory change. If no other entities will be affected, include a specific statement to that effect.	
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; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	N/A
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.	N/A
Benefits the regulatory change is designed to produce.	The benefits of the proposed changes are improved clarity and reduced redundancy of the regulatory text.

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 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.

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.

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.

No alternative regulatory methods are applicable nor were alternative regulatory methods considered.

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.

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 24VAC30-21 are intended to reduce redundancy and improve clarity of the regulation in alignment with the criteria set out in Executive Order 19 and the ORM procedures. The regulation enables VDOT to protect the public health, safety, and welfare by preserving the integrity of the state system of highways and by facilitating the safe and convenient transportation of goods and people and continues to be necessary. The regulation was last reviewed in 2021 and no complaints have been received. The regulation does not overlap or conflict with state law, federal law, or federal regulation, and the text which overlaps with other state regulations is proposed to be removed. 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.

No public comments were received during the public comment period following the publication of the previous stage.

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.

The CTB 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 or email to Steven Jack, Regulatory Manager, 1401 E. Broad St. Richmond, VA 23219, telephone (804) 786-3885, steven.jack@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
21-10	N/A	Section 10 defines the words and terms used in the regulation.	The definitions of "Commissioner" and "Commonwealth" will be removed as they are no longer used in or relevant for the regulation. "Right of Way," "System of state highways" and "VDOT" will be amended to clarify and streamline the definitions.
21-20	N/A	Section 20 covers general provisions concerning permits. Subsection A prohibits work on any real property under the ownership, control, or jurisdiction of the board or VDOT until written permission is obtained from	The title of this section will be expanded to include uses of right of way to reflect the combination of sections 20 and 30. Clarifying amendments will be made to subsection A to conform to similar proposed changes to 24VAC30-151-20. Occupancy restrictions will also be added to subsection A to reflect the combination of sections 20 and 30.

		VDOT through a permit. Subsection B requires permit applicants to comply with the conditions set forth in applicable VDOT regulations. Subsection C contains indemnification and save harmless requirements for permittees. Subsection D requires removal, at no cost to the Commonwealth unless VDOT agrees, of any structure placed upon or within the right of way by a permittee.	Subsections B and C are proposed to be removed as they are duplicative of requirements contained in 24VAC30-151, the Land Use Permit Regulations. 24VAC30-151 is the more appropriate regulation for these requirements. Additionally, clarifying changes will be made and minor edits will be added in accordance with the "Form, Style and Procedure Manual for Publication of Virginia Regulations."
21-30	N/A	Section 30 relates to general provisions concerning use of right of way. Specifically, this section covers occupancy of the right of way; restrictions on activities occurring on bridges; treatment of property that is growing or has been placed on the right of way; restrictions on causing water to flow from any source upon the right of way and causing any increase of the water lawfully on the right of way; and restrictions on laying roads, railroads, and tracks along, upon, or across highways in the system of state highways.	The current section 30 will be merged with section 20 to streamline the regulation. Current subsection A of section 30 will be removed as it is generally duplicative of subsection A of section 20; however, "occupancy" will be added to subsection A of section 20 to ensure that this potential use of state highway right of way remains prohibited without written permission from VDOT. Subdivision B1 will be removed as it is duplicative of the prohibition on parking, stopping, or standing on bridges contained in 24VAC30-640-20. 24VAC30-640, Parking on Primary and Secondary Highways, is the more appropriate regulation for this prohibition. The exemption contained in the current subdivision B5 will be expanded to included fire and law enforcement vehicles or vessels. Minor formatting, streamlining, and clarifying updates will be made throughout this section. Additionally, minor changes will be made in this section in accordance with the "Form, Style and Procedure Manual for Publication of Virginia Regulations."
21-40	N/A	Section 40 outlines the statutory authority for regulation of entrances from adjacent property to right of way of highways within the state highway system and prohibits any entrance from being made, built, or constructed upon the right of way of any highway within the system of state highways	Section 40 is duplicative of 24VAC30-73, the Access Management Regulations, and 24VAC30-151, the Land Use Permit Regulations, and as such is proposed to be removed. 24VAC30-73 and 24VAC30-151 are the more appropriate regulations for the information contained in this section.

		until VDOT has determined the location is acceptable from a public safety standpoint and has granted approval for the entrance.	
21-50	N/A	Section 50 restricts placement of airport or heliport facilities adjacent to highway rights of way.	Minor changes will be made in this section in accordance with the "Form, Style and Procedure Manual for Publication of Virginia Regulations."

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