



Virginia
Regulatory
Town Hall

Periodic Review and
Exempt Action or Exempt Agency Final Regulation
Agency Background Document

Agency Name:	Virginia Department of Transportation (Commonwealth Transportation Board)
VAC Chapter Number:	24 VAC 30-561-10 et seq.
Regulation Title:	Adoption of the Federal Manual on Uniform Traffic Control Devices
Action Title:	Amendment to APA-Exempt Regulation
Date:	May 4, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation which is exempt from the Administrative Process Act pursuant to § 9-6.14:4.1.

Note that agency actions exempt pursuant to § 9-6.14:4.1 do not require filing with the Registrar a Notice of Intended Regulatory Action or at the proposed stage. The agency must still, however, comply with the requirements of the Virginia Register Act (§ 9-6.18 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their final regulation in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

This regulation, based on a resolution of the Commonwealth Transportation Board, formally adopts the 1988 edition of the federal *Manual on Uniform Traffic Control Devices (MUTCD)*, and any revisions or rulings to this manual, as the standard for all highways under VDOT jurisdiction. The Commonwealth Transportation Commissioner and the Traffic Engineering

Division are authorized to publish and distribute changes to the *MUTCD* as they appear in the Code of Federal Regulations. The Office of the Attorney General has determined that this regulation is exempt from the APA under the exemption granted by § 9-6.14:4.1B11 (traffic signs, markers, or control devices.). Along with the *Virginia Supplement to the MUTCD*, filed as a separate regulation under the number 24 VAC 30-310-10, this regulation is the official source for information concerning traffic signs, signals, markers, and other control devices, such as dimensions, color, installation specifications, sign types, etc.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The basis for this regulation is as follows:

State statute: §§ 33.1-12 and 46.2-830. The CTB has general authority under the former statute to make regulations concerning the use of the system of state highways. The CTB has authority under the former statute to classify, designate, and mark state highways and provide a uniform system of marking and signing these highways under its jurisdiction. This statute also directs that the system of marking and signing shall correlate with and conform to the system adopted in other states.

Federal statute: VDOT is obligated by federal law to follow minimum standards of the *MUTCD* by Title 23, USC §§ 109(b), 109(d), and 402 (a), or it may develop its own standards. The Federal Highway Administration has approved the *MUTCD* as the national standard for all highways open to public travel. By resolution, the CTB adopted the *MUTCD* as the standard for all highways under the jurisdiction of the Virginia Department of Transportation on March 15, 1979, and reaffirmed this step on February 18, 1988, and November 16, 1989, when the federal *MUTCD* was revised. The *Virginia Supplement to the MUTCD* was adopted via CTB resolution dated November 20, 1980.

The *Virginia Supplement to the MUTCD*, filed separately as a regulation, presents standards or guidelines that may exceed the minimum requirements of the federal *MUTCD* by addressing unique circumstances and situations in which non-standard signage (items not addressed in the *MUTCD*) is needed.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or

particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

VDOT received no public comment during the Notice of Periodic Review, so no response was prepared. No advisory group was formed to assist in the periodic review.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected. Please state the reasons the agency determined the regulation be amended or terminated.

Goals:

1. To ensure traffic signs, signals, and other traffic control devices are designed and installed in compliance with accepted federal and agency requirements to preserve motorist safety and preserve the infrastructure of the road system.
2. To minimize the number and severity of highway accidents and fatalities.
3. To protect the public's health, safety, and welfare with the least possible intrusiveness to the citizens and businesses of the Commonwealth.
4. Is the regulation written clearly and understandably?

Goal 1: VDOT is legally obligated to follow the *MUTCD*. The purposes set forth in this goal are complimentary to those of Goal 2, because both goals deal with legitimate governmental activities: preservation of public safety and protection of the public welfare through good stewardship of the transportation infrastructure.

Goal 2: Highway accidents and fatalities are monitored by VDOT's Traffic Engineering Division. Based on statistics collected by the division, for the ten-year period 1989-99, death rates in Virginia declined by 33 percent. Over the same time span, the number of vehicle crashes in Virginia declined from 143,155 to 139,573. Furthermore, Virginia's death rate declined from 1.72 to 1.09. For comparison purposed, the U. S. death rate of declined from 2.26 to 1.52 for the same period.

However, these decreases in accidents and fatalities cannot solely be attributed to the *MUTCD*. A combination of state-of-the-art engineering (which includes more advanced technology in the design and materials used for highways, guardrails, traffic signs and signals, and improved maintenance procedures), legislation (whose purpose is to improve motorist safety), better law enforcement techniques, and innovative educational programs for safety (such as those sponsored by the Department of Motor Vehicles and the National Highway Institute) all play a part. The *MUTCD* can claim a share of the credit, because this regulation establishes specifications for traffic signals, markers and other control devices.

Goal 3: VDOT believes that uniform traffic control standards that preserve motorist safety, minimize injury or death to those working within the highway right of way, and prevent damage to the road infrastructure are essential to public safety and welfare.

Goal 4: VDOT believes that the lack of public comment received in response to the Public Notice indicates general satisfaction with the regulation as written.

There is no effect on the family or family stability, other than the obvious benefits from increased safety for the traveling public.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

There is no viable alternative to achieve the purpose of this regulation in another form. VDOT is obligated by federal law to follow the *MUTCD* or develop its own standards concerning signs, signals, and traffic control devices. Furthermore, state statute directs that the system of marking and signing will correlate and conform, as reasonably as possible, with the system used in other states.

A regulation is an appropriate means to promote uniform standards, especially when it includes provisions for regulatory signs that have the force of law. Furthermore, without a regulation in place, VDOT could face legal action and liability for damages from those who sustain property damage or bodily injury or death in traffic accidents.

Therefore, VDOT considers this regulation to be the least burdensome alternative available for achieving the purpose of the regulation.

Statement of Final Agency Action

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

VDOT amended the regulation entitled *Adoption of the Federal Manual on Uniform Traffic Control Devices* by signature of the Deputy Commissioner on April 30, 2001. Under the rules established in *the Registrar's Form, Style, and Procedure Manual*, regulations exempt from the APA under the provisions of § 9-6.14:4.1 B become effective upon filing, so the amended regulation will become effective upon receipt by the Registrar. VDOT expects the regulation will be published in *The Virginia Register* in the spring of 2001.

Additional Information

Please indicate that the text of the proposed regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law. Note that the OAG's certification is not required for Marine Resources Commission regulations.

If the exemption claimed falls under § 9-6.14:4.1(C) (4)(c) of the APA please include the federal law or regulations being relied upon for the final agency action.

Proposed text is attached. The Office of the Attorney General originally reviewed this regulation in 1993, and found that it was exempt from the APA under the following exemption: § 9-6.14:4.1 B (11), which exempts regulations dealing with traffic signs, markers, or control devices. The Office of the Attorney General reviewed the amended regulation and issued an opinion dated April 9, 2001, that VDOT has the authority to amend the regulation, that it comports with applicable state and federal law, and the exemption is properly applied.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

With the exception of benefits to safety, this regulation has no discernable effect on the institution of the family and family stability, nor does it affect the other factors listed above.