



Virginia
Regulatory
Town Hall

townhall.virginia.gov

Final Regulation Agency Background Document

Agency name	Virginia Board for Geology
Virginia Administrative Code (VAC) citation	18 VAC 70-20
Regulation title	Board for Geology Regulations
Action title	Amendment to Board for Geology Regulations
Document preparation date	December 2, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

The existing regulation sets standards for certification and continued certification of individuals as geologists; standards of practice and conduct for certified geologists; and grounds for disciplinary action for certified geologists.

The Board for Geology proposes to delete language redundant to its statutory authority; to amend the language establishing the fee for the certification examination; to repeal the language establishing a dishonored check fee; to amend the qualifications for certification to more clearly articulate the requirements that must be fulfilled prior to qualifying for certification; to amend the certification by reciprocity standards; to add a section requiring the Board to be notified in the event of a change in name or address of a regulant; and to amend the grounds for certification denial or disciplinary action as the result of a criminal conviction.

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.

The Virginia Board for Geology took final action on its proposed amendments to the Board for Geology Regulations during its meeting on October 13, 2004.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter numbers, if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Chapter 14 of Title 54.1 of the *Code of Virginia* provides statutory authority to the Board for Geology (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5401000001400000000000>).

These amendments to the Board's current regulations implement Section 54.1-1402 of the *Code of Virginia*, which mandates that the Board for Geology establish regulations necessary for the reasonable administration of Chapter 14 of Title 54.1 of the *Code of Virginia*.

Neither the current regulations nor the proposed amendments to the current regulations derive their legal authority from federal legal authority.

The Office of the Attorney General has certified that the Board for Geology has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and federal law. The certification is dated November 28, 2004.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The Board proposes to delete the section providing for a Board vote on the qualifications of each applicant for certification because it is redundant to the Board's statutory authority. Removing a redundancy will have no impact on public protection. The Board may be able to identify tasks appropriate for delegation to staff, which could result in faster service to applicants and fewer Board meetings.

The section establishing the dollar amount of the certification examination and providing authority for the Board to establish the certification examination fee in accordance with the terms of a contract competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act is being amended to delete the examination dollar amount as no longer

necessary. Public protection is assured through compliance with the Virginia Public Procurement Act and by removing language that is outdated. A confusing redundancy will be eliminated.

The section establishing entry standards for certification is being amended to include the education and experience requirements. Currently the Board uses the standards established under its statutory authority found in Section 54.1- 1403 of the *Code of Virginia*. The current regulations are silent on this issue. Clear and specific standards are essential to protect the health, safety and welfare of Virginia's citizens.

The section establishing certification by reciprocity standards is being amended to focus the regulation's attention on the standards met by an applicant to qualify for a license in another jurisdiction rather than on just the examination. Examinations can be difficult, if not impossible, to evaluate from the standpoint of substantial equivalency. Focusing on the examination exclusively ignores the other entry standards that should also be evaluated in order to determine that the applicant has met an entry standard in the other jurisdiction that is substantially equivalent to Virginia's. Clear and specific standards that provide for a full evaluation of applicant qualifications are essential to protect the health, safety and welfare of Virginia's citizens.

A new section is being added to assure that applicants and regulants notify the Board of any change in name or address. Regulatory programs work only if those regulated can be reliability identified and located to investigate any allegation of regulations violation filed by a member of the public. The current regulation is silent; therefore, the Board has no effective means of assuring its records are accurate and up-to-date. Those failing to comply may be subject to disciplinary action. Identifying and being able to contact those regulated is essential to the operation of any regulatory program that protects the health, safety and welfare of Virginia's citizens.

The subsection establishing a fee charged to those who pay a fee using a check or other instrument not honored by the bank or other financial institution upon which it was drawn has been repealed. Section 2.2-614.1 of the Code of Virginia provides that the fee for dishonored checks shall be \$35 or the amount of any costs, whichever is greater.

Other amendments have been proposed to add to clarity.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.

The definition section (18 VAC 70-20-10) is being amended to add three definitions that will add to clarity.

The section requiring a majority vote (18 VAC 70-20-20) of the Board to issue a geology certification is being repealed as redundant to the Code of Virginia and to enable delegation of some tasks to staff.

The fee section (18 VAC 70-20-30) is being amended to delete language establishing a specific fee for the certification examination. The remaining language mandates that the examination fee be set through a contact with a vendor in compliance with the Virginia Public Procurement Act. The public is protected through the Board's compliance with the Virginia Public Procurement Act in setting the examination fee.

The fee section (18 VAC 70-20-30) is also being amended to delete language establishing a specific fee for paying any fee with a check or other instrument not honored by the bank or other institution upon which it was drawn. Section 2.2-614.1 of the Code of Virginia establishes the fee for a dishonored check to be \$35 or the amount of any costs, whichever is greater, making the regulation provision no longer necessary.

The reinstatement section (18 VAC 70-20-50) is being amended to remove language requiring a reinstatement applicant to give the reasons that he allowed his certificate to expire as a condition of reinstatement. A certificate may have not been renewed for any number of reasons not related to public protection. The remaining language enabling the Board to require re-qualification, reexamination or both before reinstating is sufficient to assure that only qualified individuals have their certificate reinstated.

The section establishing entry standards (18 VAC 70-20-80) is being amended to include the education and experience requirements used by the Board currently under its statutory authority found in § 54.1-1403 of the Code of Virginia. These are based on the standards currently provided to individuals requesting eligibility information and currently used by the Board in determining eligibility.

The waiver of examination section (18 VAC 70-20-90) is being amended to more precisely focus on the examination waiver authority granted to the Board by § 54.1-1404 of the Code of Virginia.

A new section is being added (18 VAC 70-20-105) to require certificate holders to report a change in their name or address to the Board within 30 days. The current regulations are silent on this matter. Efficient regulation is not possible without the correct names and addresses of regulants.

The compliance with other laws section (18 VAC 70-20-110) is being amended to remove "(regulations)" from the end of the last sentence in subpart 4. It is not clear why the word is present. Its deletion has no impact.

The disciplinary section (18 VAC 70-20-140) is being amended to accurately reflect the enabling statute's requirement for a formal hearing as opposed to an informal fact finding in order for the Board to take disciplinary actions; to include fraud or deceit in renewing as well as applying for a certificate as a ground for disciplinary action; and to clarify that gross, rather than ordinary,

negligence is a ground for disciplinary action. An amendment is also made to make clear that the conviction of a felony that would adversely affect the practice of geology is a ground for disciplinary action.

Issues

Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

No disadvantages to the public or the Commonwealth have been identified.

The primary advantages to the public, both those seeking geologist certification and those seeking the services of a certified geologist, are the clarification of entry standards for applicants to sit for the examination and for applications for examination waiver; the potential to streamline Board operations by delegating tasks to DPOR staff; the authority to maintain current names and addresses of those certified to practice; and the citation of the Board’s authority under the Code of Virginia to deny certification to those with criminal records.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
18 VAC 70-20-30 (7)	Fee of \$25 is charged when any fee is paid with a dishonored check.	Provision is deleted.	Section 2.2-614.1 of the Code of Virginia establishes this fee at \$35 or the amount of any costs, whichever is greater.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

Commenter	Comment	Agency response
------------------	----------------	------------------------

<p>Wm. Kelly Baty, C.P.G. Hydrogeologist Loudoun County, Virginia Department of Building and Development 703 771-5390 Direct 703 771-5215 Fax wbaty@loudoun.gov</p>	<p>I have read the proposed changes and I believe they are good changes. I thank you for updating our regulations and maintaining our professional standards.</p>	<p>The Board thanks Mr. Baty for his response.</p>
<p>Allen R. Brockman P.O. Box 327 Tappahannock, VA 22560 CPG 711 allenandjenni@rivnet.net</p>	<p>I have read through the proposed regulations for Geology (18 VAC 70-20-<i>et seq.</i>) and have the following comments:</p> <p>In general, the changes that have been proposed clarify the specifications of the regulations. However, one section (18 VAC 70-20-105), as posted on the Virginia Town Hall website, remains somewhat vague.</p> <p>Section 18 VAC 70-20-105 as proposed should be revised to specify the following:</p> <p>(1) The penalty, if any, to be assessed when a professional geologist fails to notify the Board, in writing, of any such change in name or address.</p> <p>(2) What address or name changes require Board notification (e.g. only Business addresses, only Home addresses, or both; what about phone numbers?). If the pertinent items which need updates are listed elsewhere in the regs, that/those section(s) need to be cross referenced here.</p> <p>(3) A procedure (and time limit) for DPOR's acknowledgment of its receipt of the name/address change needs to be established in the regulation. Otherwise, how can a geologist know that their changes have been received</p>	<p>(1) Penalties for a failure to comply with the Board's regulations are found in 18 VAC 70-20-140.</p> <p>(2) Certificates are issued to regulants as individuals at their home address. The Board has no statutory authority over any regulant's business and, therefore, there is no requirement to advise the Board of a change in business address.</p> <p>(3) A new certificate will be printed and mailed to the regulant at the new address. Receipt of the new license at the new address constitutes the regulant's acknowledgement by the Board.</p> <p>(4) Change of address notifications will be accepted by facsimile, regular mail and by electronic mail.</p> <p>(5) The change of address should be reported to DPOR at the same time as the regulant reports his new address to the US Postal Service and to others from whom he expects to receive mail communication.</p> <p>(Re:) All allegations of failure to comply with the Board's regulations are investigated by the staff of the Department of Professional and Occupational Regulation. Evidence of a violation is matured to the Board through an Informal Fact Finding Conference (IFF) or a Formal Hearing under the provisions of the Virginia Administrative Process Act. The regulant is present during the proceeding and may provide testimony and evidence. The results of the IFF or Formal Hearing are referred to the Board to decide on the appropriate penalty or whether a penalty is appropriate at all.</p> <p>In cases where tardiness in filing an address change is the only allegation, it is most likely the regulant would receive a written warning from the Board's staff.</p>

	<p>and processed within the time window and without penalty?</p> <p>(4) The acceptable format for the notification. Will DPOR accept all of the following within 30 days? Fax, snail mail, email (all could be writing; if all are acceptable, I would suggest adding each as examples)</p> <p>(5) How will DPOR identify when the 30 day notification window should begin? (e.g. for home address change, does it begin when the geologist begins moving furniture into the new home or business, or does it begin when the last piece of furniture is moved out of the old home or business?)</p> <p>Re: Penalty (in #1) It appears that the problem of a geologist's failure to update address information only would come to the Board's attention when a Board mailing or other contact is returned to the Board or is otherwise not successfully completed (or upon a complaint to the Board from the public). If there is to be a penalty for improper notification of address/phone/or other info changes, it should be exacted on the occasion that the Board learns of an address/phone number/etc. that was not updated. At the time of the Board's knowledge of such an infraction, the geologist should be required to explain why the Board was not previously updated within the prescribed 30 day time window from when the change occurred (as further specified in regulation changes related to #5 above). At all other times, the geologist is obligated to update their information with the Board within 30 days--<i>on the honor system</i>--after all, we are professionals here. If the geologist fails in this</p>	
--	--	--

	<p>obligation, and the Board learns of this failure, then the penalty process and 30 day determination (however it will be specified in #5) should proceed. All of this procedure should be spelled out in the regulations (and/or guidance--but it would be best enforced if specified in the regulations), if it is to have any meaning or teeth.</p>	
--	---	--

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 70-20-10	N/A	Silent	Add definition of “related geological science degree” to specify what degrees, other than those found in § 54.1-1403 B 2, will meet the degree requirement for certification.
18 VAC 70-20-10	N/A	Silent	Add definition of “responsible charge” to add clarity when the term is used in 18 VAC 70-20-80 to describe the nature of experience that meets the entry standard for certification.
18 VAC 70-20-10	N/A	Silent	Add definition of “supervision” to add clarity when the term is used in 18 VAC 70-20-80 to describe the nature of experience that meets the entry standard for certification.
18 VAC 70-20-20	N/A	Requires a majority vote of the members of the Board in order to approve an application for certification.	Repeal. The current language is redundant to the Board’s statutory authority which empowers the Board to issue licenses. Repeal will allow the Board to delegate tasks to Agency staff allowing faster processing of applications and reducing the frequency of Board meetings.
18 VAC 70-20-30	N/A	Sets a specific \$100 fee to sit for the certification examination.	Repeal the language establishing the \$100 fee. The remaining language allows the Board to continue charging the fee arrived at after competitive negotiation of a contract with a vendor in compliance with the Virginia Public Procurement Act.
18 VAC 70-20-30	N/A	Sets a \$25 fee for dishonored checks.	Repeal. The fee for dishonored checks is set by § 2.2-614.1 of the Code of Virginia.
18 VAC 70-20-50	N/A	Requires a certification reinstatement applicant to	Repeal. An individual may forget to renew his certification or decide that he will not

		state the reasons he allowed his certification to expire as condition of reinstatement.	renew his certification for any number of good reasons not related to public protection. The remaining language allows the Board to make certification reinstatement decisions based on the applicant's qualifications at the time a reinstatement decision is being considered.
18 VAC 70-20-60	N/A	Requires that a reinstated certification be assigned an expiration date two years following the previous expiration date.	Amended to specify that the reinstated license will expire on August 31 of the odd-numbered year following the date of certification reinstatement. The current language could result in an expiration date that has already passed being assigned to a reinstated certification.
18 VAC 70-20-80	18 VAC 70-20-80	Requires an applicant to meet the education, examination and experience requirements found in 54.1-1403 of the Code of Virginia.	<p>The amended language provides specific standards that implement the Board's statutory mandate through regulation. The applicant must use Board-supplied forms; be of ethical character; meet specific educational and experience standards; and pass the Board's examination. The specific standards are derived from those currently used by the Board based on its statutory authority and supplied in writing to those seeking information concerning certification.</p> <p>Subpart A 1 requires the application to be made on forms provided by the Board. This allows the applicant to present his qualification in a manner that may be efficiently evaluated by the Board.</p> <p>Subpart A 2 is derived from § 54.1-1403 of the Code of Virginia and requires all applicants to be of ethical character.</p> <p>Subpart A 3 specifies the nature of the college degree required for certification and provides a specific alternative for those who do not have the specific degree.</p> <p>Subpart A 4 requires written documentation that the courses submitted by an applicant are equivalent to those required by the regulation language. Applicant will be required to submit course descriptions for Board evaluation. This does not differ materially from current practice.</p> <p>Subpart A 5 specifies the nature and length of the experience necessary to qualify for a certification. The experience areas are derived from the examination task analysis.</p> <p>Subsection B specifies when graduate or</p>

			<p>undergraduate study may substitute for work experience and is based on the standards established in § 54.1-1403 of the Code of Virginia.</p> <p>Subsection C specifies the number of hours or workdays necessary to comprise a year of experience and provides a mechanism to equate part-time experience to full-time experience.</p> <p>Subsection D requires each applicant to pass the Board's examination to demonstrate the knowledge and skill necessary for the public practice of geology.</p>
18 VAC 70-20-90	N/A	Establishes standards for certification by reciprocity with another state or territory.	Amended to change the focus from the equivalency of the examination used by the other jurisdiction to a focus on the standards established in § 54.1-1404 for wavier of the examination. It will no longer be necessary to attempt to evaluate the equivalency of the examination used by another state in order to determine whether an applicant may qualify for an examination wavier and, as a result, be certified based upon the license or certification issued by another state. The regulation is conformed to statute as a result.
None	18 VAC 70-20-105	Silent	New section requires certificate holders to keep the Board advised of any change in their name and address. This enables the Board to accurately identify those individuals that it is responsible for regulating.
18 VAC 70-20-110	N/A	Currently ends with "(regulations)," a term with no apparent use or function, appearing as it does at the end of the section.	Repealed as a housekeeping matter.
18 VAC 70-20-140	N/A	Establishes standards for disciplinary action against regulants.	<p>Amended to reflect the statutory requirement that formal hearings, rather than informal fact findings are necessary in determining what, if any, disciplinary action will be taken by the Board against the certificate holder.</p> <p>Added the term "renewing" to subpart 1 to empower the Board to discipline an individual who used fraud or deceit to renew his certification.</p> <p>Added the term "gross" before "negligence" to clarify that gross negligence, rather than simple negligence, is subject to Board disciplinary action. This also conforms the regulation language to the statute language.</p>

			Former subsection B has been deleted and its substance added as subpart 4, specifying what criminal convictions would be grounds for Board disciplinary action.
--	--	--	---

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

No family impact has been identified.