



Fast Track Proposed Regulation Agency Background Document

Agency name	Board for Waterworks and Wastewater Works Facility Operators
Virginia Administrative Code (VAC) citation	18 VAC 160-20
Regulation title	Board for Waterworks and Wastewater Works Operators Regulations
Action title	Amendments to Implement Computer Administered Examination
Date this document prepared	December 20, 2005

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The amendments will delete current language providing for a paper and pencil examination and add language that provides for a computer administered examination as well as language enabling applicants to apply directly to the examination vendor rather than to the Board to sit for the examination. The vendor will, in consultation with Board staff, determine applicant eligibility to sit for the examination. Those passing the examination must apply to the Board for licensure.

The amendments will replace the current single application to sit for the examination and become licensed with a separate application to sit for the examination and a separate application for license. Under the proposed amendments, applicants will be able to qualify to sit for the examination and become licensed in a much shorter period of time.

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 Board for Waterworks and Wastewater Works Operators voted to amend its regulations by the fast track procedure during its meeting on December 7, 2005.

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 General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

Section 54.1-2301 B. (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-2301>) states that the Board shall examine operators and issue licenses. The licenses may be issued in specific operator classifications to attest to the competency of an operator to supervise and operate waterworks and wastewater works while protecting the public health, welfare and property and conserving and protecting the water resources of the Commonwealth.

Section 54.1-201 (5) (<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+54.1-201>) empowers regulatory boards to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The imperative form of the verb “shall” is used, making the Board’s authority to regulate mandatory rather than discretionary.

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 the regulation 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 language in the current regulations provides for an examination to be given at least twice a year, and requires the application to be received by the board at least 60 days before the examination date. Board staff has approximate 30 days to process all of the applications and order the correct number of each of the 10 separate examinations and assure they are delivered to the correct examination site. Those who meet the experience requirement and have no record of disciplinary action or criminal conviction will be approved to sit for the examination and issued a license when a passing grade is electronically posted to their record by the examination vendor. Those with a record of disciplinary action or a criminal conviction may be required to participate in an Informal Fact Finding Conference (IFF) under the Virginia Administrative Process Act and obtain approval by a majority vote of the board before being approved to sit for the examination. Those failing the examination are allowed two additional opportunities to pass the examination during the two years following approval. In addition, any individual who will meet the experience requirement no more than three months after the date of the examination may request to sit for the examination as a conditional candidate to avoid the long wait until the next examination. Conditional candidates who pass the examination will not be issued a license until they document to DPOR that they have the remaining three months of qualifying experience.

The purpose of the proposed amendments is to repeal provisions no longer necessary, and which are, in fact, cumbersome for a computer administered examination. Beginning in 2006, applications will be

submitted to the board's vendor. Those found to have met the experience requirements will arrange an appointment with the vendor to sit for the examination at one of the vendor's locations. The examination will be available five to six days a week and most will be scheduled within seven to ten days after the request an appointment. Records on those who pass the examination will be transmitted electronically to DPOR. Those failing the examination may take the examination an unlimited number of time during the one-year period that follows the date they were approved to sit for the examination. Those passing the examination will then apply to DPOR for a license. At this time, those with a disciplinary record or a criminal record will be afforded an IFF and the Board will decide whether the license is to be issued or denied.

It is no longer necessary to require the application to be received at least 60 days before the examination date as the examination is available virtually daily. Nor is it necessary to allow those within three months of completing the experience requirement to sit for the examination as the examination will be available immediately after they meet the experience requirement and submit a complete examination application. It is no longer necessary to limit the number of times an individual may take the examination and the one year provided to pass will allow an individual to take the examination a dozen or more times.

Language is added to enable examination administration and application processing by an examination vendor. The board still maintains the authority to administer the examination and process examination applications should the vendor be unable to perform or there be no vendor available.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

All of these amendments make it easier and faster for a qualified person to become licensed. No person is likely to object to being able to take the examination at a day and time of his choosing rather than during one of the two annual dates required by the current regulations. No person is likely to object to having his examination application approved very shortly after he completes his qualifying experience and submits a complete application.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

The new substantive provisions provide for an examination administered by a vendor. The vendor may also process applications to sit for the examination. Those passing the examination will apply to DPOR to become licensed. Those failing the examination may re-take the examination an unlimited number of times during the year following their examination application approval date.

The requirement to apply 60 days before the examination date and the provision allowing conditional candidates to sit as much as three months before they have the required qualifying experience are repealed as no longer necessary and, in fact, now cumbersome. An unlimited number of opportunities to pass the examination during a one year period replaces the two re-examinations during a two year period provision and provides much more opportunity to pass the examination.

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.*

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1. The primary advantage to the public is that those operating waterworks and wastewater works facilities will be able to qualify to sit for the examination and become licensed according to a schedule convenient to them or their employer rather than a schedule convenient to the Commonwealth. No disadvantages have been identified.
 2. The primary advantage to the agency and the Commonwealth is that application and examination services will be delivered more quickly utilizing modern technology. No disadvantage has been identified.
 3. No other pertinent matters of interest to the regulated community, government officials, or the public have been identified.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.

No federal requirements have been identified pertinent to this proposed regulatory action.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

None have been identified.

Regulatory flexibility analysis

Please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.

Neither the current regulations nor the amendments thereto apply to businesses. They contain no compliance or reporting requirements for businesses and have no impact on performance standards for small businesses.

The agency analyzed the current regulations and its custom of administering the examination a fixed number of times per year using pencil and paper examination methods. A decision was made to explore the possibility of administering the examination electronically on a daily basis. A request for proposal (RFP) resulted in a contract that provides full examination services more frequently and conveniently. The regulations apply to individuals and not to businesses. The indirect impact on any business employing a regulant should be positive as the employer will enjoy the same new ease and flexibility in obtaining a license. Any down time currently caused by the timing of the paper and pencil examination should be sharply reduced or eliminated.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>(a) Fund source – NGF Fund detail – 0900 (b) No one-time costs are associated with the proposed amendments.</p> <p>The Department will no longer collect examination fees, which will reduce the Board’s revenue. However, the Department will no longer pay the vendor for examination services, so the Board’s expenditures will decrease by the same amount as the revenue reduction. The board’s financial position is expected to remain stable, and there will be no impact on licensing fees as a result of this proposed regulation amendment.</p>
<p>Projected cost of the regulation on localities</p>	<p>No change is anticipated.</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>Waterworks operators and wastewater works operators and their employers.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses</p>	<p>The Board currently regulates more that 5,400 individuals as waterworks and wastewater works operators. Most of the Board’s regulants are</p>

<p>affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>believed to be employees of municipal governments or authorities supplying water and sewage services to the public. The Department has no information concerning the ownership, number of employees or gross annual sales of any business entity that employs licensed operators and may be affected as a result.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>No change in licensing fees is anticipated as a result of these regulatory changes.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The single alternative was to continue the status quo. Moving to an electronic examination using modern technology was chosen for its advantages to all concerned and in compliance with the Governor’s policy to use modern electronic methods.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent 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.

No family impact has been identified.

Detail of changes

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

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 160-20-76 (A)	N/A	Individuals must apply on forms provided by the board, application shall be complete and nonrefundable fee shall be valid for 90 days	Language deleted and the substance included in new subsection A of the same section.
N/A	18 VAC 160-20-76 (A) (1)	N/A	Restates the deleted requirement to apply on forms provided by the board by requiring application to be made on forms provided by the board or an examination vendor approved by the board. Specifies that this is an application to sit for the examination. The following subpart addresses application for licensure.
N/A	18 VAC 160-20-76 (A) (2)	N/A	Restates the deleted requirement to apply on forms provided by the department or by the examination vendor and makes clear that this application is to be directed to the board only after the applicant has passed the board's examination.
N/A	18 VAC 160-20-76 (A) (3)	N/A	Restates the deleted requirement for all applications to be completed in accordance with the accompanying instructions.
N/A	18 VAC 160-20-76 (A) (4)	N/A	Restates the requirement contained in deleted subsection D that application forms are to be accompanied by the fees required in 18 VAC 160-20-102 and makes clear that the examination fee must accompany the examination application and the license fee must accompany the license application.
N/A	18 VAC 160-20-76 (A) (5)	N/A	Restates the requirement contained in deleted subsection E that the receipt and deposit of fees in no way indicates approval of an application.
N/A	18 VAC 160-20-76 (A) (6)	N/A	Restates the requirement contained in deleted subsection D that all fees are nonrefundable.
18 VAC 160-20-76 (C)	N/A	Specifies the information that must be disclosed by those applying for a license.	Language is added to make clear that one may not make application for license until after the examination has been passed.
18 VAC 160-20-76 (D)	N/A	States that fees shall accompany any application and shall not be refunded.	Deletes language that is a part of proposed subdivisions A 4 and A 6.
18 VAC 160-20-76 (E)	N/A	States that the receipt of an application and deposit of fees in no way indicates approval of an application.	Deletes language that is a part of proposed subdivision A 5.
18 VAC 160-20-	N/A	States that the board shall administer an approved	Replaces current language with language that provides for an examination to be

90 (D)		examination at least twice a year.	administered by the board or by an examination vendor approved by the board to implement the new computer delivered examination that will be available five or six days a week by appointment.
18 VAC 160-20-90 (D) (1)	N/A	Allows an applicant to sit for the examination as much as three months early if he will meet the entry requirement within three months after the date of the examination.	The provision allowing one to sit for the examination as much as three months early is deleted in its entirety and replaced with a provision requiring applicants to sit for the examination to have met all experience requirements before being approved for the examination. It also specifies that examination registration instructions will be provided to those who apply and meet the experience standards. This implements the first part of the proposed two part application process by requiring an application to sit for the examination to be submitted separately from the application for licensure.
18 VAC 160-20-90 (D) (2)		Establishes procedures for those unable to sit for the examination at the scheduled time and place so that they may be rescheduled for the next examination. Requires application and fees to be submitted by those who fail to timely notify the board.	The procedures for those unable to sit as scheduled are replaced with a provision concerning examinee conduct at the examination site and the consequences of misconduct at the examination site.
18 VAC 160-20-90 (D) (3)		Establishes reexamination procedures for those who fail the examination and allows two reexaminations during the two years immediately after examination application approval. Those who do not pass must submit a new application and fee.	Modifies the current reexamination provision to allow an unlimited number of attempts to pass the examination during the year that immediately follows the examination application approval date. Continues to require a reexamination application and the payment of the examination fee.
18 VAC 160-20-90 (D) (4)		Requires examination and reexamination applications to be received by the board at least 60 days before the examination date.	The 60-day provision is deleted as cumbersome and unnecessary with the new computer administered examination and replaced by language making clear that the examination fee is to accompany each application for reexamination.
18 VAC 160-20-90 (E)		N/A	Establishes the new provision that those passing the examination must apply to the board and satisfy the board's application requirements before being granted a license to practice.