



Proposed Regulation Agency Background Document

Agency name	Board for Geology
Virginia Administrative Code (VAC) citation	18 VAC 70 - 20
Regulation title	Board for Geology Regulations
Action title	Proposed Amendments
Document preparation date	January 6, 2004

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

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 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.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the 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+TOC540100000140000000000000>).

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 December 31, 2003.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing 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 proposed education and experience standards will be the subject of public comment and may be modified by the Board in response to that public comment within the limits of its statutory authority. 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 effect 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.

Other amendments have been proposed to add to clarity.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" 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 contract 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 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 requalification, reexamination or both before reinstating is sufficient to assure 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 the regulatory action poses no disadvantages to the public or the Commonwealth, please so 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.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

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	(a) Fund source – NGF Fund detail – 0900 (b) No one-time or ongoing costs are associated with the proposed regulation amendments.
Projected cost of the regulation on localities	None anticipated.
Description of the individuals, businesses or other entities likely to be affected by the regulation	Individuals certified as professional geologists. None of the proposed amendments are anticipated to affect businesses or entities. The amendments are minor in nature and will have little, if any, affect on the conduct of commerce.
Agency’s best estimate of the number of such entities that will be affected	The Department currently regulates approximately 850 certified professional geologists.
Projected cost of the regulation for affected individuals, businesses, or other entities	No additional costs to regulants are anticipated to result from these changes.

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.

The amendment to delete the section providing for the Board to vote on the qualifications of each applicant was considered for both retention and repeal. Repeal was chosen because it eliminated a redundancy and provided the Board a clear alternative to accomplish its mission that does not now exist.

The amendment deleting the dollar amount of the examination fee was considered by the Board for retention and repeal. The dollar amount remained in the regulations when the current regulations were adopted to facilitate the examination that was then being administered to Virginia applicants only. The language concerning the Virginia Public Procurement Act was included to facilitate the implementation of the national examination then being developed and considered for use in Virginia by the Board. Since the effective date of the current regulations,

the Board has made the transition to the national examination and is charging a fee established in compliance with the Virginia Public Procurement Act. The Board considered amending the dollar amount to reflect the amount in the current contract and rejected that alternative because it would require a regulation amendment any time the fee established by an examination contract changed. The Virginia Public Procurement Act was determined to be adequate to assure the fee was set appropriately.

The amendment adding education and experience requirements was considered by the Board to determine whether it was necessary or desirable. The Board has relied on the education and experience requirements articulated in its statutory authority (54.1-1403 of the Code of Virginia). The Board agreed that the standards should be clearly articulated in the regulation document itself.

The amendment dealing with the reciprocity standards was considered by the Board to determine whether the existing standard should be retained or amended. The Board concluded that the focus of the reciprocity standard should be on the individual applicant’s qualifications rather than the nature of the examination the applicant had passed in another jurisdiction. Determining the equivalency of examinations given by different jurisdictions is difficult if not impossible. As a result, the section was amended to focus on the standards one licensed or certified in another state must meet to receive an examination waiver.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

Commenter	Comment	Agency response
Terry Fox, Virginia Certified Geologist	Require mandatory licensure for geologists in Virginia rather than the current voluntary certification.	The Board has no statutory authority to implement the comment through regulation. An Act of the Virginia General Assembly would be necessary to mandate licensure for geologists.
Robert S. Porter, Jr., Virginia Certified Geologist	Same comment as Mr. Fox.	Same as the response to Mr. Fox.

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.

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 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 70-20-50	N/A	Requires a certification reinstatement applicant to state the reasons he allowed his certification to expire as condition of reinstatement.	Repeal. An individual may forget to renew his certification or decide that he will not 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	Amended to specify that the reinstated license will expire on August 31 of the odd-

		<p>expiration date two years following the previous expiration date.</p>	<p>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.</p>
<p>18 VAC 70-20-80</p>	<p>18 VAC 70-20-80</p>	<p>Requires an applicant to meet the education, examination and experience requirements found in 54.1-1403 of the Code of Virginia.</p>	<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 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>

			Subsection D requires each applicant to pass the Board's examination to demonstrate the knowledge and skill necessary for the public practice of geology.
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 waiver of the examination. It will not 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 waiver 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.	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. Added the term "renewing" to subpart 1 to empower the Board to discipline an individual who used fraud or deceit to renew his certification. 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. Former subsection B has been deleted and its substance added as subpart 4, specifying what criminal convictions would be grounds for Board disciplinary action.