



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50 -30
Regulation title	Board for Contractors Individual License and Certification Regulations
Action title	General Review
Date this document prepared	March 23, 2009

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board for Contractors (the Board) seeks to amend its current regulations to clarify provisions of the current regulations, respond to changes in the industry and requests from current licensees. With the exception of regulations promulgated due to the statutory implementation of the Certified Elevator Mechanic program and the Certified Water Well System Provider program, the last non-fee related regulatory change was made in 2003.

The most substantive change to these proposed regulations made by this submission is the creation of an inactive license status for tradesmen. Other changes include the deletion of language that is duplicated in the statutes, clarification of some sections and the elimination of the fee for duplicate copies of a license.

Other changes which may be necessary may also be considered.

Acronyms and Definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

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 number(s), 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.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of tradesman and certification of backflow prevention device workers, certified elevator mechanics and certified water well system providers in the Commonwealth. The content of the regulations is determined at the discretion of the Board, but shall not be in conflict with the purposes of the statutory authority

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, the environmental benefits, and the problems the proposal is intended to solve.

1) Amending the definitions in these regulations is essential in order to maintain consistency in the administration of the statutory licensing requirements of tradesman and certified backflow prevention device workers assigned to the Board for Contractors. Many of these definitions have been in place since the promulgation of the original tradesman regulations in 1995 and duplicate language already contained in the statutes. Removing these duplicative sections of the regulations eliminates the confusion, which can occur when the statutes and regulations conflict during that period of time after a statutory amendment becomes effective and the regulations “catch-up” through the regulatory review process. The confusion caused during this lag time can be detrimental to the health, safety and welfare of citizens, as the two sources of authority (law and regulation) contain different provisions.

Amending the eligibility criteria for Certified Water Well System Providers to include other equivalent experience as a method for meeting those criteria was added to address an issue that has been brought to the Board numerous times since the inclusion of the program under the Board’s authority. Without this language applicants from other states that do not have a individual licensing program like Virginia’s, but have some sort of documented training and experience, can never meet the eligibility requirements, as the current language requires that all experience be under the supervision of a certified master water well systems provider. This language allows the Board to consider other sources of education and experience in determining whether an individual is minimally competent to obtain certification.

Other proposed amendments were made to clarify definitions and other sections that have been identified as confusing based on comments from licensees and other interested parties that we have received on a day-to-day basis. This clarification of the regulations makes them easier to understand and serves both the regulant population and the public by making it easier to

determine if a tradesman is in compliance with the regulations that were promulgated to protect the health, safety and welfare of citizens.

2) The overall goal of this proposed package is to simplify existing regulations through the elimination of duplicative sections and clarification of sections that had been the subject of questions from the public and licensees, and to increase the level of protection afforded to the citizens of Virginia with the least amount of burden placed on the regulant population.

The implementation of an inactive license status was made at the request of several individuals after the continuing education regulatory amendment was promulgated. The Board for Contractors, through their administrative and licensing staff, has seen an increase in the number of telephone calls, emails and other forms of correspondence, from citizens and government officials, regarding a large number of individuals who, for various reasons, are not able to practice their trade for compensation, but would like to maintain their license. Such instances include working for local government agencies, state agencies and even some private companies. Additionally, the Board has received numerous complaints from retired tradesmen that would like to keep their “title” as master or journeyman, although they have no intention of performing work. These individuals, many on a fixed income, are unable to afford the cost of continuing education and approached their General Assembly members and requested a statutory requirement that would mandate the availability of inactive tradesman licenses. The Board reviewed the inactive license procedures and regulations currently in place with the Real Estate Board and determined that a similar status could be made available to tradesman and would address some of the issues presented by licensees and citizens.

Other changes which may be necessary may also be considered.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the “Detail of changes” section.)

General clarifying changes to the regulations as well as the removal of a fee for duplicate cards. These proposed regulations also create an inactive status for tradesmen licenses.

18 VAC 50-30-10 (General definitions): A new definition for “inactive tradesman license” was added and two definitions were clarified.

18 VAC 50-30-40 F: A provision was added to allow the Board to use other equivalent experience as a way to meet the eligibility criteria for Certified Water Well System Providers.

18 VAC 50-30-75: This section was added to provide a method for tradesmen with an inactive license to change that license status back to active.

18 VAC 50-30-110: This section which provides for fees for duplication has been repealed in these proposed regulations.

18 VAC 50-30-120: Language was added to provide that tradesmen whose licenses are in an inactive status are not required to complete continuing education.

18 VAC 50-30-185: Language was clarified to include fine as a method of sanction available to the Board.

18 VAC 50-30-190: Prohibited acts were amended to change the term gross negligence to just negligence and to add the term incompetency. Additionally, a prohibited act was added that would hold an individual license or certificate holder accountable for failing to obtain a building permit or scheduling an inspection when required.

Other changes which may be necessary may also be considered.

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.

1) In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements as well as address issues that have been brought before the Board by private citizens, members of the General Assembly and licensees. The advantages of these changes are an increased understanding of the regulations, the elimination of an obsolete fee and a licensing option for individuals who, for whatever reason, want to maintain their license but not practice.

2) Since 2005 the Board has received nearly 500,000 telephone calls and 20,000 emails. A large number of these emails and telephone calls are from licensees and citizens requesting clarifications of the regulations. Since the implementation of the continuing education requirements, the Board has also received a number of complaints and requests from individuals requesting that their license be placed in some sort of status that will allow them to keep the license, but not use it, while not being required to meet the continuing education requirements. These proposed regulations address each of these issues and will likely result in a decrease in telephone calls and emails, providing time for staff to process applications and provide other services in a timelier manner.

3) With the exception of education providers, who, if inactive licenses are available, may experience a minute decrease in class attendance, there are no other pertinent matters of interest that may be identified with this proposal.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal, which are 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.

There are no requirements in these proposed regulations that would be more restrictive than those required in federal law.

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.

There would be no localities particularly affected by these proposed amendments.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the board/agency is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Eric Olson, Executive Director, c/o DPOR, 9960 Mayland Drive Suite 400, Richmond, Virginia 23233, telephone (804) 367-2785, fax (804) 527-4401, email: contractor@dpor.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last date of the public comment period.

A public hearing will be held and notice of the public hearing may appear on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov) and the Commonwealth Calendar. Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Board for Contractors
Fiscal Impact of Proposed Regulation

Summary:

The current Tradesman regulations are being revised with a number of changes and enhancements. The regulations include some clarifying changes, the establishment of an inactive status and related renewal and reinstatement requirements, amendments to the eligibility for water well systems provider certification, and elimination of fees related to duplicate card and card exchange.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the Code provisions of the Callahan Act (54.1-113), and the general provisions of 54.1-201. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The board has no other source of income.

Fiscal Impact:

	FY 2009	FY 2010	FY2011	FY2012
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	0	0	0	0
Ongoing Costs	0	0	0	0
Total Fiscal Impact	0	0	0	0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: The revised regulations will affect all existing tradesman and tradesman applicants.

Estimated Number of Regulators: The revised regulations will affect approximately 34,800 certified tradesmen and approximately 3,000 new applicants annually.

Projected Cost to Regulants: There are no expected costs to the regulants. The elimination of the duplicate card and card exchange fees will save the requestor \$30 to \$40 per request. The department revenue will decrease approximately \$5,000 per year.

**Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>	
2006-08	2,269,331	13,868,255	13,718,500	2,419,086	17.6%	35,347	Tradesman as of 6/30/08
2008-10	2,419,086	15,903,446	18,761,377	-438,845	-2.3%		
2010-12	-438,845	21,731,108	20,232,570	1,059,693	5.2%		
2012-14	1,059,693	21,731,108	22,706,654	84,147	0.4%		

Fee History

<u>Major Fee Type</u>	<u>2003</u>	<u>2005</u>	<u>Projected 2010</u>
Individual Application:			
Class A	175	200	230
Class B	150	175	220
Class C	125	150	200
Tradesman	75	90	100
Individual Renewal			
Class A	150	165	220
Class B	135	150	210
Class C	100	110	190
Tradesman	35	40	80

Board for Contractors

**Financial Status and Projections
Proposed Regulation Change**

<u>Beginning Cash</u>	<u>Ending Cash</u>	<u>Callahan</u>	<u>Number of</u>
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<u>Biennium</u>	<u>Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Balance</u>	<u>Act %</u>	<u>Regulants</u>
2006-08	2,269,331	13,868,255	13,718,500	2,419,086	17.6%	35,347 Tradesman as of 6/30/08
2008-10	2,419,086	15,898,446	18,761,377	-443,845	-2.4%	
2010-12	-443,845	21,721,108	20,232,570	1,044,693	5.2%	
2012-14	1,044,693	21,721,108	22,706,654	59,147	0.3%	

Fee History

<u>Major Fee Type</u>	<u>2003</u>	<u>2005</u>	<u>Projected 2010</u>
Individual Application:			
Class A	175	200	230
Class B	150	175	220
Class C	125	150	200
Tradesman	75	90	100
Individual Renewal			
Class A	150	165	220
Class B	135	150	210
Class C	100	110	190
Tradesman	35	40	80

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.

In reviewing the regulations, the Board considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. The Board believes that failure to adopt these regulations will actually place an unnecessary burden on both the existing regulant population and future applicants for licensure.

Most of the proposed amendments to the regulations clarify existing language; modify definitions to meet changes in the industry or to address issues brought before the Board since the last amendments were promulgated. For those changes that are more substantive the Board looked at methods used in other regulatory programs as well as those used by similar agencies in other states. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses.

The Board will consider all comments received during the public comment period as to proposed alternatives.

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.

- 1) These proposed regulations establish less stringent compliance or reporting requirements than those already in place.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) There are no reporting requirements proposed by these regulations.
- 4) There are no performance standards proposed by these regulations.
- 5) Unlike contractor licenses that are issued business entities, these licenses and certifications are issued to individuals. The effect on small businesses resulting from the promulgation of these regulations would be negligible.

Public comment

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

No comments were received during the public comment period.

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.

These proposed regulations would have no impact on the institution of the family or family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact if implemented in each section. Please detail the difference between the requirements of the new provisions and the current practice or if applicable, the requirements of other existing regulations in place.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all provisions of the new regulation or changes to existing regulations 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, rationale, and consequences
18 VAC 50-30-10			<p>Amends the definition of “Formal vocational training” to correct the implication that the department approves such training when it is the sole responsibility of the Board to approve all providers relevant to licensure.</p> <p>Adds the definition of “Inactive tradesmen license” to the regulations. This definition is necessary to address the proposed implementation of an inactive tradesmen license status.</p> <p>Amends the definition of “Incidental” to clarify that such work is outside the scope of practice allowed the licensee.</p>
18 VAC 50-30-40			<p>Adds a provision to allow the Board to use other equivalent experience as a way to meet the eligibility criteria for Certified Water Well System Providers. Current regulations require applicants to prove practical experience under the supervision of Certified Water Well System Providers. The addition of this language allows individuals whose experience is in a jurisdiction that does not have license requirements for Certified Water Well Systems Providers, to present to the Board other forms of experience which the Board may consider. Additionally sole proprietors</p>

		<p>who did not have adequate experience during the grandfather period to obtain their master license will not be able to meet the 2012 of requiring a master level certification in order to maintain their contractor licenses. Without this amendment these small businesses may be in jeopardy of losing their license. The addition of this language allows the Board to consider alternative sources of experience that can be used to meet the minimum competency standards intended by the regulatory program.</p>
<p>18 VAC 50-30-75</p>		<p>This section was added to provide a method for tradesmen with an inactive license to change that license status back to active. This section is necessary to address the proposed implementation of an inactive tradesmen license status and tradesmen could then reactive their license if they choose.</p> <p>The implementation of an inactive license status was made at the request of several individuals after the continuing education regulatory amendment was promulgated. The Board for Contractors, through their administrative and licensing staff, has seen an increase in the number of telephone calls, emails and other forms of correspondence, from citizens and government officials, regarding a large number of individuals who, for various reasons, are not able to practice their trade for compensation, but would like to maintain their license. Such instances include working for local government agencies, state agencies and even some private companies. Additionally, the Board has received numerous complaints from retired tradesmen that would like to keep their "title" as master or journeyman, although they have no intention of performing work. These individuals, many on a fixed income, are unable to afford the cost of continuing education and approached their General Assembly members and requested a statutory requirement that would mandate the availability of inactive tradesman licenses. The Board reviewed the inactive license procedures and regulations currently in place with the Real Estate Board and determined that a similar status could be made available to tradesman and would address some of the issues presented by</p>

			<p>licensees and citizens.</p> <p>In addition this regulation will be less burdensome in that tradesmen will be able to inactive their license instead of paying the cost of continuing education. If they choose to obtain inactive status, tradesmen also will not have to worry about reinstatement fees and the possibility of having to retake the examination should they let their license lapse.</p>
18 VAC 50-30-110			<p>This section which provides for fees for duplication has been repealed in these proposed regulations. When the tradesmen program began there were a large number of tradesmen who were giving their license to unlicensed individuals so that they may pull permits. The duplicate cards fee was implemented to stop this. With the introduction of online license verification and other electronic record availability this fee is no longer necessary and is burdensome to those individuals who have actually lost or destroyed their license cards. Additionally, there is no fee for duplicate contractor licenses; the elimination of this fee brings the two sets of regulations more in sync.</p>
18 VAC 50-30-120			<p>Language was added to provide that tradesmen whose licenses are in an inactive status are not required to complete continuing education. These individuals, many on a fixed income, are unable to afford the cost of continuing education and approached their General Assembly members and requested a statutory requirement that would mandate the availability of inactive tradesman licenses. The addition of this language will lessen the burden on inactive tradesmen.</p> <p>Since 2005 the Board has received nearly 500,000 telephone calls and 20,000 emails. A large number of these emails and telephone calls are from licensees and citizens requesting clarifications of the regulations. Since the implementation of the continuing education requirements, the Board has also received a number of complaints and requests from individuals requesting that their license be placed in some sort of status that will allow them to keep the license, but not use it, while not being required to meet the continuing</p>

			education requirements. These proposed regulations address each of these issues and will likely result in a decrease in telephone calls and emails, providing time for staff to process applications and provide other services in a timelier manner.
18 VAC 50-30- 185			Language was clarified to include fine as a method of sanction available to the Board. The provision to allow the Board to fine a regulant was inadvertently omitted from the regulation when originally promulgated. This amendment corrects that omission and adds fines to the list of sanctions already present. §54.1-202 gives the Board authority to fine.
18 VAC 50-30- 190			<p>Prohibited acts were amended to change the term gross negligence to just negligence and to add the term incompetency. The term “gross negligence” is a term of law and certain criteria must be met for something to rise to the level of gross negligence. Negligence that fails to rise to the level of “gross negligence” can still certainly be harmful to the public. In order to ensure protection to the public from tradesmen that are negligent, the Board is amending the definition. Determining competency is another important responsibility of the Board. There is no better authority in the Commonwealth to determine the competency of a tradesman, than the Board that is responsible for determining that tradesmen meet minimum standards to hold a license. Giving the Board the ability to discipline a contractor for not meeting a minimal level of competency is an important tool in the regulatory scheme.</p> <p>Additionally, a prohibited act was added that would hold an individual license or certificate holder accountable for failing to obtain a building permit or scheduling an inspection when required. This is a companion prohibited act that is also found in the Board for Contractor Regulations. § 54.1-1111 of the Code of Virginia does not preclude properly licensed tradesmen from obtaining a building permit. As no contractor license is needed for projects that are less than \$1,000, there are a large number of tradesmen that obtain permits that are not contractors. There are many instances of tradesmen either failing to</p>

			obtain a permit when necessary or failing to obtain an inspection. This amendment will allow the Board to address that issue.
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