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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 50-30
VAC Chapter title(s)	Board for Contractors Individual License and Certification Regulations
Action title	Backflow Vocational Training
Date this document prepared	July 10, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Contractors seeks to lower the current vocational training requirement for Certified Backflow Prevention Device Workers who have less than seven years of experience in water distribution systems. The current requirement is 40 hours and the Board is proposing to lower it to 32 hours.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no acronyms or technical definitions used in this form that are not specifically identified.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

On July 7, 1999, the Board for Contractor promulgated regulations, as a result of a legislative mandate, to certify individuals that performed inspections on backflow prevention devices. The Board based many of its eligibility requirements on those already in place for regulatory bodies throughout the United States and by national certifying organizations. Since that time the experience and vocational training requirements have not changed.

Over the course of the past several months the Board has been contacted by individuals interested in becoming certified in Virginia, who have experienced difficulty finding a 40 hour vocational training class, which is required for individuals that have less than seven years of experience with water distribution systems. These individuals have indicated that, while a few providers still offered 40 hour classes, the majority had shifted to 32 hour classes. This was done in large part because a significant number of regulatory agencies had changed their education requirements from 40 hours to 32 hours.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia and Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

§ 54.1-1102 A of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the statute necessary for the certification of backflow prevention device workers.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board for Contractors is responsible for regulating businesses and individuals engaging in work within the construction and trade industry. Part of that responsibility is to develop entry level eligibility criteria that afford protection to the public while, at the same time, are not overly burdensome to those seeking licenses or certifications. Since 1999 the Board has certified individuals as backflow prevention device workers and set entry standards that were, at the time, reasonable and not overly burdensome. When developing these initial entry criteria the Board reviewed the requirements of those other states that regulated the backflow industry. Additionally, the Board reviewed the certifying criteria set forth by national certifying agencies active in the industry. Since that time several states and organizations have

changed their initial entry criteria, reducing the number of vocational training hours. In response, several of the approved vocational training providers, who are generally approved in other states as well as Virginia, have stopped offering some of the longer certification courses. This has directly resulted in applicants for a backflow certification in Virginia experiencing difficulty in finding vocational training courses that meet the requirements set forth by the Board for Contractors.

In response to comments that have been received over the past several months, the Board researched the vocational training criteria in several states and found that four of six neighboring states that regulate backflow testers have vocational training requirements that are less than those of Virginia. Additionally, while there is no training requirement that is prevalent throughout the United States, of the dozen programs reviewed, only three required the same amount of vocational training as Virginia, the others were lower.

In response to the comment received from applicants and the research done by board staff, the Board for Contractors determined that an amendment to the current requirements was appropriate.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

18 VAC 50-30-40 would be amended to lower the formal vocational training requirement of individuals with a minimum of four years, but less than seven years of experience from 40 hours to 32 hours.

Alternatives to Regulation

Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.

There are no permanent alternatives to this regulatory action that would meet the requirements of its purpose.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the

Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board for Contractors is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail, email or fax to Marjorie King c/o Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, telephone (804) 367-2785, fax (866) 430-1033, email: contractor@dpor.virginia.gov. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.