



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Board for Contractors Regulations
Action title	Contractor Regulations – Regulatory Reform
Date this document prepared	May 3, 2013

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) 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 seeks to amend its current regulations to eliminate the requirement of the Qualified Individual to report past adverse financial history and to extend the reinstatement period from one to two years.

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.

There are no technical terms or acronyms in this document that are not defined in the regulations.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.

Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the Board's discretion, 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.

The Board for Contractors, along with other regulatory boards, was tasked by the Governor to review its regulations to determine if any provisions could be identified as obsolete, unnecessary, or overly burdensome and subsequently eliminated. The Board identified two current provisions of the regulations that can be identified as a burden to its licensees with no measurable level of protection to the health, safety and welfare of the general public.

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.)

Section 18 VAC 50-22-40 of the regulations requires that the qualified individual, or individuals, of an applicant for a Class C license, submit information on any past-due debts, judgments, or defaults on bonds. The proposed amendments will remove this requirement.

Section 18 VAC 50-22-50 of the regulations requires that the qualified individual, or individuals, of an applicant for a Class B license, submit information on any past-due debts, judgments, or defaults on bonds. The proposed amendments will remove this requirement.

Section 18 VAC 50-22-60 of the regulations requires that the qualified individual, or individuals, of an applicant for a Class A license, submit information on any past-due debts, judgments, or defaults on bonds. The proposed amendments will remove this requirement.

Section 18 VAC 50-22-170 of the regulations currently prohibits the reinstatement of a license once more than one year has passed since the expiration date. The proposed amendments will extend the reinstatement period from one year to two years after expiration.

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 indicate.

1) The proposed amendments will remove the burden of compiling and providing documentation of a past adverse financial history for the Qualified Individual for all three classes of license. Currently, the Qualified Individual, who may only be an employee of a licensed contractor, has been held to the same reporting standard as the Responsible Managers (owner/officers) and the Designated Employee (the individual who completed the business examination), both of whom are referenced in § 54.1-1106 and § 54.1-1108 of the Code of Virginia. While a licensed contractor is required to have a Qualified Individual who has demonstrated a level of technical expertise, this position is not based on any financial criteria and the Board does not hold this individual accountable for any disciplinary action that relates to the financial status of the company. Often, the applicant must compile this data, which may take several days or weeks to obtain, and submit it to the Board for review, all of which can delay the awarding of a license to the business. The elimination of this requirement will result in an immediate reduction in the amount of time it takes for a company, with a Qualified Individual with an adverse financial history, to obtain its license. There is no reduction in the protection to the public as the individuals held accountable for the financial decisions made by the company (owner/officers) must still report past adverse financial events as before. This only affects the Qualified Individual.

The extension of the reinstatement period will allow those individuals who may have inadvertently allowed their license to expire for a year, bring their license into compliance, without the burden of having to complete the education and examination requirements of a new license.

2) The primary advantage to the Commonwealth is to allow businesses that must comply with the current regulations, to obtain their license faster, allowing them to go to work faster. The agency will benefit from less documentation having to be tracked and reviewed during the normal course of processing the application. Any decreases in the amount of time currently spent processing applications has a direct affect on the number of applications that may be processed, resulting in an overall decrease in the time it takes to process all applications.

3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 the proposed regulations that would be more restrictive than those currently 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.

No localities will be particularly affected.

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.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also 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) the probable effect of the regulation on affected small businesses, and 3) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>) or by mail, email, or fax to Eric Olson, c/o Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233; email: contractor@dpor.virginia.gov; fax (866) 430-1033. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action.

The agency is using the participatory approach in the development of the proposal. Pursuant to the Public Participation Guidelines, 18 VAC 50-11-10 *et seq.*, a panel will not be used.

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 requirements creates the anticipated economic impact.

Board for Contractors
Fiscal Impact of Proposed Regulation

Summary:

The current Board for Contractors Regulations are being updated. Certain reporting requirements for the Qualified Individual of an applicant are being eliminated from the regulations. The reinstatement time period for contractors set in the regulations will be extended from one year to two years. No financial or economic impact to the board is expected as a result of these changes. Costs to licensees will be reduced for those individuals previously subject to reinstatement, who would have been required to incur the expense of meeting current eligibility criteria, which could have included education and examinations.

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 2013	FY 2014	FY2015	FY2016
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: This regulation change will affect some licensed contractors and some applicants for licensure as a contractor.

Estimated Number of Regulators: As of April 1, 2013, the Board regulates 64,783 contractors.

Projected Cost to Regulators: Costs to some licensees previously subject to reinstatement will be reduced based on needing to meet previous eligibility criteria, which could have included education and examinations.

**Board for Contractors
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>
2010-12	964,975	20,458,901	15,819,582	5,604,294	35.4%
2012-14	5,604,294	20,108,701	18,789,229	6,923,766	36.8%
2014-16	6,923,766	20,184,048	19,547,379	7,560,435	38.7%
2016-18	7,560,435	20,184,048	20,383,232	7,361,251	36.1%

Number of Regulators

64,783 Contractors as of April 1, 2013
 30,434 Individuals as of April 1, 2013, including 27,780 Tradesmen

Fee History \$

<u>Major Fee Type</u>	<u>2005</u>	<u>2010</u>
Individual Application Fee	90	130
Class A Contractor Application Fee	200	360
Individual Renewal Fee	40	90
Class A Contractor Renewal Fee	165	240

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. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses. Alternatives that failed to meet this consideration were rejected.

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 compliance or reporting requirements less stringent than those already in place.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) These proposed regulations eliminate reporting requirements currently in place.
- 4) There are no performance standards proposed by these regulations.
- 5) The overwhelming majority of businesses licensed as contractors by the Board for Contractors are small businesses, and the majority of those individuals licensed as tradesman are employed by small businesses, subsequently, every regulatory action undertaken by the Board affects small businesses. The Board for Contractors must promulgate regulations that provide an adequate level of protection to the public while, simultaneously ensuring that individuals and businesses are not given unnecessary burdens to licensure. The amendment is intended to further strengthen that protection and, while these amendments may raise some concerns within the regulated community, and thus become a matter of interest, they will not likely be looked at as being overly burdensome to most of the regulant population or the industry. The Board believes

that these amendments are the least stringent that can be promulgated that will still deliver that protection.

Public comment

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

Commenter	Comment	Agency response
Lance Hunziker (via Town Hall)	Concerned that removal of the requirement for Qualified Individuals to disclose outstanding business debts may unwillingly subject members of the public to potential threats.	The Board for Contractors shares your concern as it pertains to the Responsible Management and Designated Employee of a licensed contractor business. Qualified Individuals are in the licensing requirements to ensure that there is a person that holds the technical qualifications in a specific construction field, allowing the company to perform work in that field, they are not held accountable for meeting the financial requirements for licensure nor are they held accountable by the Board for Contractors for financially related issues. This proposed amendment will not change the reporting requirements for the members of Responsible Management or the Designated Employee.

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 amendments will have no impact on the institution of the family or family stability.

Detail of changes

Please list 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. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action.

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

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 50-22-40 C		Requires that applicants for a Class C license provide documentation of any adverse financial history for the Qualified Individual.	<p>The proposed amendment would eliminate the requirement that any adverse financial history for the Qualified Individual be documented and reported.</p> <p>There are two individual components of a Class C license, the Responsible Management and the Qualified Individual. The members of Responsible Management (owners/officers) of the business are the individuals held accountable, by the Board for Contractors, for compliance with the regulations. Applications for initial licensure or modifications to existing licenses must be signed by a member of Responsible Management. They are required to take the pre-license education course and demonstrate that the company meets the financial requirements set forth in the statutes and regulations.</p> <p>The Qualified Individual is the person that has the technical skills in a particular licensing specialty or classification, which will be listed on the license. For example, a contractor business with the home improvement specialty must have a Qualified Individual who has the requisite years of experience for the class of the license and who has successfully completed the home improvement technical examination. There are no financial requirements placed on the Qualified Individual.</p> <p>The compilation of historical data regarding an adverse financial history can often be time consuming and somewhat burdensome. An important burden for the individual who will be ultimately responsible for the fiscal dealings of the licensee and an even more important tool for the Board to determine an individual's potential risk to consumers if awarded a license. It is an</p>

<p>18 VAC 50-22-50 E</p>			<p>unnecessary burden if the information will not be used by the Board to determine eligibility for licensure.</p> <p>Detailed data has not been kept by the Board identifying affected licensees, but anecdotal evidence suggests that a dozen or so applicants per month spend from three to ten days trying to compile this information before submitting an application. The vast majority of these applications for licensure would have been approved upon initial review. The amount of time the company could have been licensed is reduced by the amount of time it takes to compile the information.</p> <p>Had this amendment been in place, these businesses would have been licensed sooner and would have been able to perform work. It is even reasonable to deduce that some of these applicants may have lost potential contracts when they were unable to meet licensing deadlines due to this delay.</p> <p>The proposed amendment would eliminate the requirement that any adverse financial history for the Qualified Individual be documented and reported.</p> <p>There are three individual components of a Class B license, the Responsible Management, the Designated Employee, and the Qualified Individual. The members of Responsible Management (owners/officers) of the business are the individuals held accountable, by the Board for Contractors, for compliance with the regulations. Applications for initial licensure or modifications to existing licenses must be signed by a member of Responsible Management. They are required to take the pre-license education course and demonstrate that the company meets the financial requirements set forth in the statutes and regulations.</p> <p>The Designated Employee is the individual chosen by the business to successfully complete the contractor business examination. Additionally, this individual is identified in § 54.1-1110 of the Code of Virginia, as being a party to the “substantial identity clause” of the licensing law,</p>
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			<p>allowing the Board for Contractors, in the event that one license is revoked, to take disciplinary action against any other licenses the Designated Employee is affiliate with.</p> <p>The Qualified Individual is the person that has the technical skills in a particular licensing specialty or classification, which will be listed on the license. For example, a contractor business with the home improvement specialty must have a Qualified Individual who has the requisite years of experience for the class of the license and who has successfully completed the home improvement technical examination. There are no financial requirements placed on the Qualified Individual.</p> <p>The compilation of historical data regarding an adverse financial history can often be time consuming and somewhat burdensome. An important burden for the individual who will be ultimately responsible for the fiscal dealings of the licensee and an even more important tool for the Board to determine an individual's potential risk to consumers if awarded a license. It is an unnecessary burden if the information will not be used by the Board to determine eligibility for licensure.</p> <p>Detailed data has not been kept by the Board identifying affected licensees, but anecdotal evidence suggests that a dozen or so applicants per month spend from three to ten days trying to compile this information before submitting an application. The vast majority of these applications for licensure would have been approved upon initial review. The amount of time the company could have been licensed is reduced by the amount of time it takes to compile the information.</p> <p>Had this amendment been in place, these businesses would have been licensed sooner and would have been able to perform work. It is even reasonable to deduce that some of these applicants may have lost potential contracts when they were unable to meet licensing deadlines due to this delay.</p>
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<p>18 VAC 50-22-60 E</p>			<p>The proposed amendment would eliminate the requirement that any adverse financial history for the Qualified Individual be documented and reported.</p> <p>There are three individual components of a Class A license, the Responsible Management, the Designated Employee, and the Qualified Individual. The members of Responsible Management (owners/officers) of the business are the individuals held accountable, by the Board for Contractors, for compliance with the regulations. Applications for initial licensure or modifications to existing licenses must be signed by a member of Responsible Management. They are required to take the pre-license education course and demonstrate that the company meets the financial requirements set forth in the statutes and regulations.</p> <p>The Designated Employee is the individual chosen by the business to successfully complete the contractor business examination. Additionally, this individual is identified in § 54.1-1110 of the Code of Virginia, as being a party to the “substantial identity clause” of the licensing law, allowing the Board for Contractors, in the event that one license is revoked, to take disciplinary action against any other licenses the Designated Employee is affiliate with.</p> <p>The Qualified Individual is the person that has the technical skills in a particular licensing specialty or classification, which will be listed on the license. For example, a contractor business with the home improvement specialty must have a Qualified Individual who has the requisite years of experience for the class of the license and who has successfully completed the home improvement technical examination. There are no financial requirements placed on the Qualified Individual.</p> <p>The compilation of historical data regarding an adverse financial history can often be time consuming and somewhat burdensome. An important burden for the individual who will be ultimately responsible for the fiscal dealings of the licensee and an even more important tool for the Board</p>
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<p>18 VAC 50-22- 170</p>			<p>to determine an individual's potential risk to consumers if awarded a license. It is an unnecessary burden if the information will not be used by the Board to determine eligibility for licensure.</p> <p>Detailed data has not been kept by the Board identifying affected licensees, but anecdotal evidence suggests that a dozen or so applicants per month spend from three to ten days trying to compile this information before submitting an application. The vast majority of these applications for licensure would have been approved upon initial review. The amount of time the company could have been licensed is reduced by the amount of time it takes to compile the information.</p> <p>Had this amendment been in place, these businesses would have been licensed sooner and would have been able to perform work. It is even reasonable to deduce that some of these applicants may have lost potential contracts when they were unable to meet licensing deadlines due to this delay.</p> <p>This proposed amendment will extend the reinstatement period for all contractors from one year to two years. The requirement for making the applicant apply for a new license and meet current requirements after reinstatement period ends, will remain the same. This change will give these individuals that let their license lapse an additional year to pay the reinstatement fee to bring their license into compliance. This will reduce the expense to those individuals that may be required to complete the exam and the time to wait for a new application to be reviewed. Additionally, when a license is reinstated, it becomes active back to the last expiration date and, from a regulatory standpoint, the licensee is considered continually licensed during that time. This provides an additional protection to consumers who may have hired contractor when the license was expired and, since he would have been considered unlicensed, does not have access to the Transaction Recovery Fund. The extension of the reinstatement date will afford extra time for the licensee to become compliant as well</p>
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			as provide an extra year for the consumer to remain protected.
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If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements

Enter any other statement here