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Regulatory  
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## Proposed Regulation Agency Background Document

<b>Agency name</b>	DPOR/ Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 10-20
<b>Regulation title</b>	Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Rules and Regulations
<b>Action title</b>	Develop necessary regulations to implement a regulatory program for photogrammetrists
<b>Date this document prepared</b>	April 3, 2006

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

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

The purpose of the proposal is to make the following changes:

Develop necessary regulations to implement a regulatory program for photogrammetrists, including standards for determination of topography, as permitted by HB2863 from the 2005 session of the General Assembly.

Other changes which may be necessary may also be considered.

## 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.*

§§ 54.1-404, 54.1-411.C, 13.1-549 and 13.1-1111 of the Code of Virginia authorize the Board to promulgate regulations for a regulatory system. While the Board is mandated to establish regulations, the content of the regulations is at the discretion of the Board.

## 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 new and amended regulations are necessary to implement the provisions of HB2863 of the 2005 General Assembly session which granted the APELSCIDLA Board authority to regulate the practice of photogrammetry as a sub-set of the land surveyor profession. This regulatory program will allow photogrammetrists to be licensed in an appropriate manner while ensuring the public is adequately protected through minimum competency standards of practice for individuals who are integral in the process of constructing improvements on real property and determining flood plains.

## 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 Board will develop regulations to implement a regulatory program for photogrammetrists, including standards for determination of topography, in accordance with the provisions of § 54.1-404.B of the Code of Virginia as follows:

*B. The Board may impose different licensure requirements for a limited area of the practice of land surveying for persons who determine topography, contours, or depiction of physical improvements utilizing photogrammetric methods or similar remote sensing technology who are not otherwise exempt pursuant to subsection C of § 54.1-402. Any such requirements shall include reasonable provisions for licensure without examination of persons deemed by the Board to be qualified to provide photogrammetric and remote sensing surveying services.*

*Any license issued pursuant to this subsection shall be distinctive, reflecting the limited area of the practice of land surveying so authorized, and considered as a land surveyor and the practice of land surveying for the purposes of §§ 13.1-549, 13.1-1111, 54.1-402, 54.1-405, 54.1-406 and 54.1-411. Nothing herein shall be construed to authorize a person issued a limited license pursuant to this subsection to practice beyond such limited area of practice. The*

*establishment of any such limited license shall not prohibit any duly qualified land surveyor licensed pursuant to § 54.1-400 from engaging in any such limited area of practice.*

The proposed change is being considered as a study by the Board for Professional and Occupational Regulation determined that the practice of photogrammetry does affect the health, safety and welfare of the public. Further, in order to adequately protect the public, the General Assembly granted the APELSCIDLA Board the authority to develop the necessary regulatory program.

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.*

The public and those associated with the development of real property will now have a pool of qualified photogrammetrists from which to select. In addition, the Board will have the authority to discipline those regulants who show themselves to be a danger to the public. The photogrammetrists will bear the costs of the regulatory program; however, the expense is expected to be minimal (on par with what Land Surveyors currently pay) and should not have an adverse impact on the profession. The GIS community is exempted from this licensure program and should not be adversely affected.

**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.*

Not applicable.

**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.*

Not applicable.

**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 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 Mark N. Courtney, Executive Director, DPOR, 3600 West Broad St., Richmond, VA 23230, Phone (804) 367-8514, FAX (804) 367-2475, APELSCIDLA@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](http://www.townhall.virginia.gov)) and can be found in the Calendar of Events section of the Virginia Register of Regulations. Both oral and written comments may be submitted at that time.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

<b>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</b>	See below.
<b>Projected cost of the regulation on localities</b>	See below.
<b>Description of the individuals, businesses or other entities likely to be affected by the regulation</b>	See below.
<b>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> 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.	See below.
<b>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.</b>	See below.

**Land Surveyors - Photogrammetrists  
Fiscal Impact of Proposed Regulation**

**Summary:**

This proposed regulatory change will include the addition of Photogrammetrists as a new regulatory program within the APELSCIDLA Board. This includes standards for the determination of topography, as permitted by HB2863 from the 2005 session of the General Assembly. This regulatory program will be a sublicense of the existing land surveyor license program.

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 2006	FY 2007	FY2008	FY2009	FY2010	FY2011
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 44	560 46	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:						
One-Time Costs	0	26,000	0	0	0	0
Ongoing Costs	0	0	0	0	0	0
Total Fiscal Impact	0	26,000	0	0	0	0
FTE	0.00	0.00	0.00	0.00	0.00	0.00

**Description of Costs:**

One-Time: One-time costs include computer licensing system changes and exam development costs.

Ongoing: No additional ongoing costs are expected.

Cost to Localities: No change anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** Individuals and associated firms that will provide photogrammetric services for the determination of topography/location of physical improvements for the purposes of constructing improvements to real property and/or flood plan determination.

**Estimated Number of Regulators:** Approximately 100 to 200 individuals and firms.

**Projected Cost to Regulators:** No change in licensing fees is anticipated as a result of these regulatory changes. Based on current fees, it will cost the regulant \$90 to become licensed, and \$45 annually to remain licensed.

## 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.*

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The Board will consider any and all comments received during the comment periods as to any 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.*

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The regulations were developed with consideration that the photogrammetric industry consists of small businesses. The Board considers that the regulatory methods implemented were promulgated to accomplish the applicable law while minimizing the adverse impact on small businesses and are consistent with the regulation of small businesses of other professions regulated by the APELSCIDLA Board.

## Public comment

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

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No public comment was received during the NOIRA 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.*

The contemplated changes are not anticipated to have any significant impact on Virginia's families.

**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:

The rationale for the changes in the following chart are as follows: the new and amended regulations are necessary to implement the provisions of HB2863 of the 2005 General Assembly session which granted the APELSCIDLA Board authority to regulate the practice of photogrammetry as a sub-set of the land surveyor profession. This regulatory program will allow photogrammetrists to be licensed in an appropriate manner while ensuring the public is adequately protected through minimum competency standards of practice for individuals who are integral in the process of constructing improvements on real property and determining flood plains.

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
18 VAC 10-20-10		N/A	Add appropriate definitions for the "Surveyor Photogrammetrist" license program.
18 VAC 10-20-280		N/A	Add appropriate fee for the "Surveyor Photogrammetrist" licensure program.
18 VAC 10-20-295		N/A	Add appropriate land surveyor specific definitions for the "Surveyor Photogrammetrist" license program pertaining to acceptable experience and accuracy standards.
18 VAC 10-20-300		N/A	Change the reference to the "Land Surveyor-In-Training" designation to the "Surveyor-In-Training" designation.
18 VAC 10-20-310		N/A	Add entry provisions for the "Surveyor Photogrammetrist" license program including grandfather provisions.
18 VAC 10-20-340		N/A	Amend to include reference to the "Surveyor Photogrammetrist" license program.
18 VAC 10-20-350		N/A	Amend to include examination requirements for the "Surveyor Photogrammetrist" license program.
18 VAC 10-20-360		N/A	Amend to include requirements for comity applicants for the "Surveyor Photogrammetrist" license program.

18 VAC 10-20- 380		N/A	Delete subsection F and move to a more appropriate place in the regulations (see 18 VAC 10-20-395).
	18 VAC 10- 20-382	N/A	Add standards for the determination of topography.
	18 VAC 10- 20-392	N/A	Add a section that the performance of photogrammetric surveys for the practice of land surveying (as defined in Chapter 4 of Title 54.1) must be performed by a land surveyor or surveyor photogrammetrist.
	18 VAC 10- 20-395	N/A	Move the <i>Standard of Care</i> provision for land surveyors from subsection F of 18 VAC 10-20-380 to a more appropriate place as it applies to all surveys; not just those surveys for the determination of the location of physical improvements.
18 VAC 10-20- 760		N/A	Add a seal image for the Surveyor Photogrammetrist license holders.