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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC10-20
<b>VAC Chapter title(s)</b>	Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations
<b>Action title</b>	General Review of Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations
<b>Date this document prepared</b>	February 9, 2024 (revised April 24, 2024)

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects ("the Board") intends to undertake a general regulatory review of the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations. The regulation provides for the (i) licensure of architects, professional engineers, land surveyors, and landscape architects; (ii) certification of interior designers; and (iii) registration of business entities offering or rendering professional services in Virginia.

The goals of the action include:

1. Review of discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022);
2. Review to ensure the regulation complements current Virginia law and meets applicable federal requirements, if any;
3. Review to ensure the regulation is organized, clear, and understandable; and
4. Review to ensure the regulation provides minimal burdens on regulants while still protecting the public.

In addition, the review will ensure the regulation reflects current DPOR procedures and policies, along with any other changes determined to be necessary and appropriate.

## Acronyms and Definitions

*Define all acronyms or technical definitions used in this form.*

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"ADA" means Americans with Disabilities Act.

"APELSCIDLA" means Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.

"DPOR" means Department of Professional and Occupational Regulation.

"Direct control and personal supervision" means supervision by a professional who oversees and is responsible for the work of another individual.

"EIT" means engineer-in-training.

"FE" refers to the Fundamentals of Engineering examination.

"FOIA" means Virginia Freedom of Information Act (Chapter 37 of Title 2.2 of the Code of Virginia.)

"FS" refers to Fundamentals of Surveying examination.

"NCEES" means National Council of Examiners for Engineering and Surveying.

"Resident" means physically present at the place of business a majority of its operating hours.

"Responsible person" refers to the licensed or certified professional named by a business entity registrant to be responsible and have control of the registrant's regulated services offered or rendered.

"SIT" means surveyor-in-training.

"TOEFL iBT" means Test of English as a Foreign Language Internet-based Test.

## 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 the ORM*

*procedures, “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.”*

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The impetus for this regulatory action is Executive Directive Number One (2022), which directs Executive Branch entities under the authority of the Governor “...to initiate regulatory processes to reduce by at least 25 percent the number of regulations not mandated by federal or state statute, in consultation with the Office of the Attorney General, and in a manner consistent with the laws of the Commonwealth.”

This action is not the result of a mandate.

### 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.*

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The agency is Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA).

Section 54.1-201 of the Code of Virginia provides, in part:

A. The powers and duties of regulatory boards shall be as follows:

1. To establish the qualifications of applicants for certification or licensure by any such board, provided that all qualifications shall be necessary to ensure either competence or integrity to engage in such profession or occupation.

5. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of this chapter or of Chapters 1 (§ 54.1-100 et seq.) and 3 (§ 54.1-300 et seq.) of this title.

### 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.*

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The General Assembly has charged the Board with the responsibility for regulating (i) those who practice or offer to practice as an architect, professional engineer, land surveyor, or landscape architect by requiring such individuals obtain a license in order to engage in these occupations; and (ii) those who practice interior designer by providing that such individuals may obtain a certification as a certified interior designer as evidence of qualification to engage in this occupation.

The General Assembly has charged the Board with the responsibility for regulating business entities who provide these professional services in the Commonwealth by requiring such entities register with the Board.

As mandated by the General Assembly, the Board protects the public welfare, in part, by establishing through regulation (i) the minimum qualifications of applicants for certification or licensure, provided that all qualifications are necessary to ensure either competence or integrity to engage in the profession or occupation; (ii) minimum standards to assure continued competency and to prevent deceptive or misleading practices by practitioners; and (iii) requirements to effectively administer the regulatory system administered by the Board.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

These issues are not inclusive of all potential issues that may be addressed during development of the regulation.

## 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.*

The Board has formed a regulatory review committee composed of current and former members of the Board to conduct a review of this regulation. The committee's membership includes individuals who are licensed to practice each of the regulated disciplines falling under the Board's jurisdiction (architecture, engineering, land surveying, landscape architecture, and interior design). In addition, professional specific committees of the Board also have also participated in review of this regulation.

The regulatory review committee has performed a review of the regulation. The Board is expected consider the substantive changes detailed below. However, the Board may consider other changes prior to adoption of the proposed regulation.

Part I – General (18 VAC 15-20-10 et seq.):

Definitions (18 VAC 15-20-10):

- Revising the section to remove the definition of “resident.” Since COVID-19, many businesses are no longer in “brick and mortar” buildings and businesses are now able to supervise employees virtually. Because the “responsible person” can virtually supervise and review the work of others there is no longer a need to have a “resident” onsite to review the work in person.
- Revising the section to remove the definition of “good moral character.” Provisions currently in this definition will be incorporated in to the general application requirements in section -20.

Replacement of Wall Certificate (18 VAC 15-20-17): Repealing this section as it is not necessary.

Replacement of wall certificates can be accomplished administratively without need for provisions in the regulation.

Part II – General Entry Requirements (18 VAC 15-20-20 et seq.):

General Application Requirements (18 VAC 15-20-20):

- Provisions establishing the qualifications for “good moral character” will be incorporated into the section. Currently, these provisions are contained in the definition of “good moral character” in

section -10 of the regulation. This change is being made to remove regulatory requirements from definitions.

- Revising the provisions of this section to remove subsection C. The change is made to conform the regulation to current agency practice. Examinations for most professions are electronically administered “on-demand” instead of a pen-and-paper examination on designated examination dates. For other professions, applicants may apply after having already passed an examination.
- The provisions pertaining to application documents becoming property of the Board are being removed as these are not necessary. All application documents are considered public records in accordance with FOIA and are retained by the Board.

References (18 VAC 15-20-25): Repealing this section as it is not necessary. The section provides for the minimum requirements for written references that are submitted as part of an application. However, in practice, these references are not reviewed by Board members who review applications. Further, an applicant would not typically request someone provide the applicant a reference if the applicant knows the individual would provide a bad reference.

Language and Comprehension (18 VAC 15-20-55): Repealing this section as it is not necessary. The section provides that applicants must be able to “speak and write English” to the satisfaction of the Board and that applicants whose primary language has not always been English, or who have not graduated from a college or university in which English is the language of instruction, must submit a TOEFL iBT score report. The regulatory review committee has determined that if an applicant can pass the licensing examination, which is written in English, then the applicant has a reasonable understanding of the English language.

Modifications to Examination Administration (18 VAC 15-20-70): Repealing this section as it is not necessary. The section provides for the process for requesting ADA accommodations for examinations. DPOR already has an agency-wide policy on compliance with the ADA, which includes provisions related to examinations administered by or on behalf of DPOR. The agency policy is applicable to all regulatory boards and is publicly available through Virginia Regulatory Town Hall.

Conduct at Examination (18 VAC 15-20-75): Repealing this section as it is not necessary. The section provides the requirements for applicants’ conduct at an examination site. The vendor that administers examinations on behalf of the Board is responsible for the attendees’ conduct at examination sites.

Expiration of Initial Licenses, Certificates, and Registrations (18 VAC 10-20-87): Revising the provisions of this section to provide that business entity registrations would be valid for two (2) years from the last day of the month in which they are issued, which is the current requirement applicable to licenses and certificates issued by the Board. Currently, registrations for business entities expire on December 31 of odd numbered years.

Part III – Qualifications for Licensing of Architects (18 VAC 10-20-90 et seq.):

References (18 VAC 10-20-130): Repealing this section as it is not necessary. The section requires that an applicant for an architect license submit three (3) references as part of an application. However, in practice, these references are not reviewed by Board members who review applications. Further, an applicant would not typically request someone provide the applicant a reference if the applicant knows the individual would provide a bad reference.

Examination (18 VAC 10-20-140): Revising the provisions of this section to remove the requirement that an applicant for an architect license be approved by the Board to sit for the architect licensing examination. With this change, an applicant will be allowed to take the examination before applying for licensure.

Licensure by Comity (18 VAC 10-20-150): Revising the provisions of this section to clarify that architects licensed in other jurisdictions may apply for licensure by endorsement instead of comity. The change corrects terminology used in the regulation to reflect the current provisions for allowing individuals

licensed in other jurisdictions to become licensed in Virginia. Those who are licensed in another jurisdiction must meet requirements that are equivalent to the requirements in Virginia's regulation and pass appropriate examinations.

Part IV – Qualifications for Licensing of Professional Engineers (18 VAC 10-20-160 et seq.):

Requirements for Engineer-in-Training Designation (18 VAC 10-20-200): Revising the provisions of this section to allow an applicant for an engineering-in-training (EIT) designation to apply for the Fundamentals of Engineering (FE) examination before applying with the Board. This will conform the regulation to current practice.

References (18 VAC 10-20-220): Repealing this section as it is not necessary. The section requires that an (i) applicant for an EIT designation submit one (1) reference as part of an application; and an applicant for a professional engineer license submit (3) references as part of an application. However, in practice, these references are not reviewed by Board members who review applications. Further, an applicant would not typically request someone provide the applicant a reference if the applicant knows the individual would provide a bad reference.

Licensure by Comity (18 VAC 10-20-270):

- Revising the provisions of this section to clarify that engineers licensed in other jurisdictions may apply for licensure by endorsement instead of comity. The change corrects terminology used in the regulation to reflect the current provisions for allowing individuals licensed in other jurisdictions to become licensed in Virginia. Those who are licensed in another jurisdiction must meet requirements that are equivalent to the requirements in Virginia's regulation and pass appropriate examinations.
- Revising this section to remove the requirement that an applicant for licensure by endorsement submit three references. This requirement is not necessary. In practice, these references are not reviewed by Board members who review applications. Further, an applicant would not typically request someone provide the applicant a reference if the applicant knows the individual would provide a bad reference.
- Adding provisions to this section to allow for individuals holding a valid license in a country that is a signatory to the mobility agreements of the International Engineering Alliance to become licensed in Virginia upon meeting education and experience requirements established in the regulation.

Part V – Qualifications for Licensing and Standards of Procedure for Land Surveyors (18 VAC 10-20-280 et seq.):

Requirements for Surveyor-in-Training (SIT) Designation (18 VAC 10-20-300):

- Revising the provisions of this section to provide that applicants apply directly to NCEES to take the Fundamentals of Surveying (FS) examination. Currently, applicants are required to apply to the Board before taking the examination. This change will allow applicants to apply directly to NCEES instead. Applicants would be required to pass the examination before applying to the Board for licensure. This will conform the regulation to current practice.
- Revising the qualifications for an SIT designation to:
  - Allow an applicant with an acceptable associate's degree to qualify for the FS examination with two (2) years of land surveying experience. Currently, an applicant with an associate's degree must have four (4) years of experience.
  - Allow for an applicant who has graduated from high school and completed courses in algebra, geometry, and trigonometry to qualify for the FS examination with six (6) years of land surveying experience. Currently, such an applicant must have eight (8) years of experience.
  - Adding a pathway for individuals who have earned a certificate or diploma in a minimum 30-hour surveying curriculum and have three (3) years of land surveying experience to qualify for the FS.

Experience Standards (18 VAC 10-20-340): Revising the provisions of this section to provide that applicants for land surveyor, land surveyor photogrammetrist, and land surveyor B licenses demonstrate experience requirements by requiring that (i) written verification that experience was gained under the direct control and supervision of a licensed land surveyor or land surveyor photogrammetrist be documented on board-approved forms; (ii) experience must have been acquired in positions requiring the exercise of independent judgment, initiative, and professional skill; (iii) experience may be gained either prior to or after education is obtained; and (iv) experience be verified by a licensed land surveyor or surveyor photogrammetrist in an organization with a surveying practice.

References (18 VAC 10-20-345): Repealing this section as it is not necessary. The section requires that an applicant for a land surveyor license submit three (3) references as part of an application. However, in practice, these references are not reviewed by Board members who review applications. Further, an applicant would not typically request someone provide the applicant a reference if the applicant knows the individual would provide a bad reference.

Licensure by Comity (18 VAC 10-20-360):

- Revising the provisions of this section to clarify that land surveyors licensed in other jurisdictions may apply for licensure by endorsement instead of comity. The change corrects terminology used in the regulation to reflect the current provisions for allowing individuals licensed in other jurisdictions to become licensed in Virginia. Those who are licensed in another jurisdiction must meet requirements that are equivalent to the requirements in Virginia's regulation and pass appropriate examinations.
- Revising the provisions of this section to require that applicants for endorsement pass a Board-supplied examination on regulations.

Minimum Standards and Procedures for Land Surveying: Clarifying the standards and procedures for (i) land boundary surveying in 18 VAC 10-20-370; (ii) surveys determining the location of physical improvements in 18 VAC 10-20-380; and (iii) surveys for determining topography in 18 VAC 10-20-382.

Part VIII – Qualifications for Registration as a Business Entity (18 VAC 10-20-627 et seq.): Repealing provisions requiring branch offices to register with the Board. This change is being made to reduce a regulatory burden on businesses. Only business entities will be required to be registered. Sections -87, -630, -640, -670, and -680 will be revised to reflect the removal of the requirement for branch offices to register with the Board.

Registration Required (18 VAC 10-20-627): Revising the provisions of this section to provide that business entities designate a responsible person for each professional service offered by the business entity when registering with the Board.

Registration Certification (18 VAC 10-20-650): Revising the provisions of this section to remove a requirement that a business entity certify that responsible persons will be resident at the place of business. Since COVID-19, many businesses are no longer in "brick and mortar" buildings and businesses are now able to supervise employees virtually. Because the "responsible person" can virtually supervise and review the work of others there is no longer a need to have a "resident" onsite to review the work in person.

Part X – Standards of Practice and Conduct (18 VAC 10-20-690 et seq.):

Organization and Styling of Practice (18 VAC 10-20-770): Revising the provisions of subsection A to provide that the responsible persons designated by the firm for the professional services offered must exercise direct control and personal supervision of the work being offered or practiced.

Professional Required at Each Place of Business (18 VAC 10-20-780): Repealing this section which requires that any regulant which maintains a place of business in Virginia that offers or practices professional services designate a resident responsible person to exercise direct control and personal supervision of the work being offered or practiced at each place of business. Because most businesses

are allowing employees to telework and provide virtual supervision, there is no longer a need to have a professional at each place of business to oversee the work of others; this is now possible through virtual means.

Notice of Adverse Action (18 VAC 10-20-785): Adding a new section that will more clearly provide for licensees to report to the Board (i) any disciplinary action taken by any jurisdiction, board, or administrative body against the licensee; (ii) any voluntary surrendering of a license, certificate, or registration done in accordance with a disciplinary action; (iii) any felony conviction; and (iv) any misdemeanor conviction involving moral turpitude, sexual offense, non-marijuana drug distribution, or physical injury. Licensees must report any such adverse actions to the Board in writing within 30 days of the action, and provide supporting documentation with the notification to the Board. This will make the regulation consistent with reporting requirements in other DPOR regulatory programs.

As the regulation is developed, the Board, in accordance with Executive Directive Number One (2022), will review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program. To the extent any such current requirement may not be necessary to protect the public health, safety, and welfare, or not necessary to effectively administer the licensure program, the Board will consider eliminating the requirement.

### 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.*

A goal of this regulatory action is to review discretionary requirements imposed on regulated parties to determine whether such requirements impose burdens that are not necessary to protect the public health, safety, and welfare; or are not necessary to effectively administer the licensure program, in accordance with the regulatory reduction goal of Executive Directive Number One (2022). As the regulation is developed, the Board will consider potential alternatives to existing requirements that may be less burdensome or intrusive while still meeting the essential purpose of the regulation.

### Periodic Review and Small Business Impact Review Announcement

*If you wish to use this regulatory action to conduct, and this NOIRA to announce, a periodic review (pursuant to § 2.2-4017 of the Code of Virginia and the ORM procedures), and a small business impact review (§ 2.2-4007.1 of the Code of Virginia) of this regulation, keep the following text. Modify it as necessary for your agency. Otherwise, delete the paragraph below and insert “This NOIRA is not being used to announce a periodic review or a small business impact review.”*

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.*

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The Board has formed a regulatory review committee composed of current and former members of the Board to conduct a review of this regulation. In addition, professional specific committees of the Board also have also participated in review of this regulation. These committees have held multiple meetings between August 2022 and August 2023. These meetings included opportunities for public comment.

The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects (APELSCIDLA) 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:

Kate Nosbisch  
Executive Director  
9960 Mayland Drive  
Perimeter Center, Suite 400  
Richmond, VA 23233  
[APELSCIDLA@dpor.virginia.gov](mailto:APELSCIDLA@dpor.virginia.gov)  
(866) 465-6206 (fax)

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 the proposed 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.