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Fast-Track Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) Chapter citation(s)	18VAC50-30
VAC Chapter title(s)	Individual License and Certification Regulations
Action title	Temporary Certification of Elevator Mechanics
Date this document prepared	November 21, 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 this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This action creates a new section under within the Individual License and Certification Regulations to establish a process for issuance and renewal of temporary elevator mechanic certifications. The Code of Virginia mandates that whenever a licensed contractor is able to demonstrate to the Board that there is a shortage of certified elevator mechanics, the Board shall issue temporary certifications in instances where specific conditions are met.

Under the proposed regulation, and in accordance with statutory requirements, a licensed contractor must attest to the Board, that after due diligence, the licensed contractor is unable to find an elevator mechanic from the list of elevator mechanics maintained by the Board to perform elevator work. The applicant must be an employee of the licensed contractor attesting to the shortage and is required to submit an application and fee to the Board. The application must include documentation verifying that the applicant has sufficient education and experience to perform work as an elevator mechanic without the direct and immediate supervision of a certified elevator mechanic. If the application satisfies the Board's

requirements, the applicant will be certified, temporarily, as an elevator mechanic. The temporary certification is valid for forty-five days, during which time the applicant must remain an employee of the licensed contractor that attested to the shortage. The regulation also establishes procedures for renewal of the temporary certification as mandated by statute.

Currently, the regulation does not address temporary certifications for elevator mechanics, nor does it prescribe the Board’s requirements and processes required to obtain such certification.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.

There are no acronyms or technical terms used in this form.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 20, 2023, the Board for Contractors voted to amend the Individual License and Certification Regulations.

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.”

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 54.1-1142.2 of the Code of Virginia mandates that “[w]henver a contractor licensed under the provisions of [Chapter 11 of Title 54.1] demonstrates to the satisfaction of the Board that there is a shortage of elevator mechanics, the Board shall issue temporary certifications...”

Additionally, representatives of the elevator mechanic industry, including the National Elevator Industry Educational Program, have expressed concern to the Board regarding the current shortage of certified elevator mechanics available to licensed contractors in Virginia.

This rulemaking is expected to be noncontroversial as the action is prompted by request from industry representatives and allows the Board to comply with a statutory 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.

The promulgating agency is the Board for Contractors. Chapter 11 of Title 54.1 of the Code of Virginia enumerates the legal authority for the Board to administer the licensure and certification programs for tradesmen, gas fitters, liquefied petroleum gas fitters, natural gas fitter providers, water well systems providers, elevator mechanics, residential building energy analysts, backflow prevention device workers, and automatic fire sprinkler inspectors.

Section 54.1-1102 of the Code of Virginia states, in part:

B. The Board shall promulgate regulations not inconsistent with statute necessary for the licensure of contractors and tradesmen and the certification of backflow prevention device workers, and for the relicensure of contractors and tradesmen and for the recertification of backflow prevention device workers, after license or certificate suspension or revocation.

In addition, § 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

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.

The General Assembly has charged the Board with protecting the health, safety, and welfare of citizens. This is accomplished, in part, by the Board establishing, through regulation, minimum qualifications for entry into a trade-related profession such as that of an elevator mechanic.

The performance of trade-related work by those who lack sufficient expertise poses a risk to the health, safety, and welfare of the public. These risks may include significant damage to property, personal injury, and death. In addition, the improper performance of trade-related work may create a substantial risk of financial harm to property owners who will be responsible for assuming costs to correct or complete work that is defective.

Representatives in the construction industry have informed the Board that there is a shortage of certified elevator mechanics and have expressed concern about a qualified candidate's inability to obtain temporary certification, as allowed by statute, due to the Board not having established procedures that provide a pathway to obtain such certification.

In adopting the proposed addition to the Individual License and Certification Regulations, the Board's goals are to comply with statute by creating a process for the issuance of temporary elevator mechanic certifications while also addressing the shortage of certified elevator mechanics as represented by stakeholders.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

The proposed regulation creates a new section that provides for the process of applying for a temporary elevator mechanic certification and outlines qualifications necessary for such certification. The new section provides that a licensed contractor may demonstrate to the Board that there is a shortage of licensed elevator mechanics and may make a request to the Board to issue a temporary elevator mechanic certification to an employee of the contractor.

A contractor must attest to the Board that after due diligence the contractor is unable to find an elevator mechanic to perform elevator work from a list maintained by the Board. The employee of the contractor must submit an application and fee to the Board. The application must provide documentation that the applicant has a minimum of two years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances, and 144 hours of formal vocational training. If the application is satisfactory to the Board, the applicant will be issued a 45-day temporary certificate as an elevator mechanic. The certificate is valid while the applicant remains an employee of the contractor.

The temporary elevator mechanic certification may be renewed if the shortage of elevator mechanics remains. Renewal requires the licensed contractor submit a new attestation regarding the shortage of certified elevator mechanics. A fee is also required.

The action also amends the regulation to provide fees for initial temporary certifications and renewal of temporary certifications.

Issues

Identify the issues associated with the regulatory change, 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 there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

Currently, there is a shortage of certified elevator mechanics, which is causing delays in the construction and repair of elevators and related conveyances. The primary advantage to the public is that this regulatory change allows qualified individuals to obtain temporary certification as elevator mechanics, thus providing a larger workforce competent to perform construction, maintenance, and service or repair of elevators, escalators, or related conveyances.

The primary advantage to the Commonwealth is that the regulatory change allows the Board to comply with statute.

A pertinent matter of interest to the regulated community is that the regulation allows individuals that are enrolled in a related apprenticeship program, and who have completed at least two years of the program, to apply for temporary certification which may provide additional practical experience for the apprentice.

No disadvantages to the public or the Commonwealth have been identified.

Requirements More Restrictive than Federal

Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.

There are no applicable federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

No other state agencies are particularly affected by the regulatory change.

Localities Particularly Affected

No localities are particularly affected by the regulatory change.

Other Entities Particularly Affected

No other entities are particularly affected by the regulatory change.

Economic Impact

Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.

Impact on State Agencies

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:	The regulation provides a pathway for temporary certification of elevator mechanics, bringing the Board into compliance with statute allowing for
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<p>a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>such certification. Additional benefits include: construction and repair of elevators is less likely to be delayed due to shortage of certified elevator mechanics; individuals enrolled in an apprenticeship program meeting certain criteria are able to apply for temporary certification, providing additional experience for the apprentice.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no anticipated costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>There are no projected benefits to other state agencies.</p>

Impact on Localities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no anticipated costs to localities because of the regulatory changes.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no anticipated benefits to localities because of the regulatory changes.</p>

Impact on Other Entities

If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.

<p>Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.</p>	<p>Based on the past four (4) years, the Board receives, on average, 182 applications per year. This suggests there could be as many as 182 individuals that are halfway through an apprenticeship program who might seek certification under this new regulation. Contractors who employ elevator mechanics would be affected by the change as these contractors would be able to employ mechanics with a temporary certification. There are 87 contractors in Virginia who are licensed to engage in elevator/escalator contracting. Many of these firms likely fall within the meaning of “small business” in § 2.2-4007.1 of the Code of Virginia.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>Individuals affected by this change include unlicensed individuals, currently enrolled in an apprenticeship program, seeking certification so that they are able to engage in regulated elevator service. Contractors who employ elevator mechanics would be affected by the change as these contractors would be able to employ mechanics with a temporary certification.</p>

<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>There is a fee associated with applying for the temporary license and renewal of a temporary license. These fees will be incurred by the applicant and/or regulant. These fees may be assumed by elevator contractors that would employ mechanics with temporary certification. There are no costs specific to reporting, record-keeping, or other administrative tasks.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit to this regulatory change is that it provides a pathway for temporary certification of elevator mechanics, bringing the Board into compliance with statute allowing for such certification. Additional benefits include: construction and repair of elevators is less likely to be delayed due to shortage of certified elevator mechanics; individuals enrolled in an apprenticeship program meeting certain criteria are able to apply for temporary certification, providing additional experience for the apprentice.</p> <p>This regulatory change may also have a slight positive impact on revenue. Since this action establishes a new type of license, there may be a slight increase in revenue. Based on the comparatively small number of licensees this license might create, and the fact that this is a temporary license with limited ability to renew, the increase in revenue is not anticipated to be largely significant but will be noticeable.</p>

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.

No alternatives to the regulatory change have been considered as the issuance of temporary elevator mechanic certifications are mandated by statute. Likewise, no less intrusive or less costly alternatives for small businesses have been considered for achieving the purpose of the regulatory change. *If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

Regulatory Flexibility Analysis

Consistent with § 2.2-4007.1 B of the Code of Virginia, 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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

As the regulatory change is proposed in accordance with statute, the Board did not perform an analysis of alternative regulatory methods.

The regulatory change reflects language included in statute and does not impose compliance or reporting requirements, nor does the change establish performance standards outside of those mandated. The regulatory change does not exempt small businesses as the statute does not provide for such exemption.

If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.

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.

Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

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 and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

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:

Cameron Parris
Regulatory Operations Administrator
9960 Mayland Drive, Suite 400

Richmond, VA 23233
 Contractors@dpor.virginia.gov
 (866) 430-1033 (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 not be held.

Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
N/A	30-72	N/A – No current requirements.	<p>Provides for the process and qualifications for a temporary elevator mechanic certification.</p> <p>Provides that, in accordance with § 54.1-1142.2, a licensed contractor may demonstrate to the Board that there is a shortage of licensed elevator mechanics and may make a request to the Board to issue a temporary elevator mechanic certification to an employee of the contractor.</p> <p>Requires that the contractor attest to the Board, on a board-provided form, that after due diligence the contractor is unable to find an elevator mechanic to perform elevator work from a list maintained by the Board.</p> <p>Requires that the employee of the contractor submit an application and fee to the Board. The application must provide documentation that the applicant has a minimum of two years of practical</p>

			<p>experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances, and 144 hours of formal vocational training.</p> <p>Provides that if the application is satisfactory to the Board, the applicant will be issued a 45-day temporary certification as an elevator mechanic. The certification is valid while the applicant remains an employee of the contractor.</p> <p>Provides that the temporary elevator mechanic certification may be renewed if the shortage of elevator mechanics remains. The contractor must submit a new attestation and a renewal fee.</p> <p>Section 54.1-1141 of the Code of Virginia requires that individuals who engage in, or offer to engage in, work as an elevator mechanic must be certified by the Board.</p> <p>The new section implements the provisions of § 54.1-1142.2 of the Code of Virginia, which provides for the temporary certification of elevator mechanics in the event of a shortage of elevator mechanics.</p> <p>Representatives in the elevator mechanic industry have expressed concern regarding the potential for a shortage of certified elevator mechanics. These new provisions allow for a process for the issuance of temporary elevator mechanic certifications as mandated by statute.</p>
30-90	N/A	Outlines the fees for initial application for licensure or certification of regulants, including certified elevator mechanics.	Adding a provision establishing an initial application fee for a temporary elevator mechanic certification.
30-120	N/A	Outlines the fees for renewal of licenses and certificates of regulants, including certified elevator mechanics.	Adding a provision establishing a renewal fee for a temporary elevator mechanic certification.
30-9998	N/A	Provides for application forms.	A new application form for temporary elevator mechanic certification and renewal of temporary certifications is added.