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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	18 VAC 50-22
<b>VAC Chapter title(s)</b>	Board for Contractors Regulations
<b>Action title</b>	Fee for Examination change
<b>Date this document prepared</b>	May 13, 2022

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

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of 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.*

In the process of negotiating a contract with our exam vendor, the Board determined the cap on exam fees was problematic when attempting to expand exam services to include multiple languages.

The Board currently adheres to the provisions of the Virginia Public Procurement Act and the agency believes that amending the regulations to remove the cap and allow the contracts to be negotiated within the provisions of the act without the cap, will allow for expanded services. These services include, but are not limited to, additional language services and remote proctoring.

Other Boards housed at the Department of Professional and Occupations Regulation have amended their regulations to include this provision.

The Board is also seeking to remove an obsolete section regarding examinations administered by the Board. The Board no longer gives examinations and hasn't done so in over 15 years.

## 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.*

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There are no acronyms, abbreviations, or definitions.

## 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.*

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This regulation action was taken on May 10, 2022 by the Department of Professional and Occupational Regulation and the Board for Contractors, known as the Fees for Examinations amendment.

## Mandate and Impetus

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

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

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This rulemaking is expected to be noncontroversial. Offering examinations in languages other than English will eliminate barriers for individuals and companies with individuals whose first language is not English. The Home Builders Association and Associated Builders and Contractors trade association have expressed the difficulty its members have faced with the application and exam process.

The Board for Contractors has worked with the Latino Advisory Board several times within the last 18 months in determining benefits and challenges of this regulatory change.

Offering Board for Contractor examinations in languages other than English, as well as remote proctoring, supports workforce development, promotes a positive business environment and will promote license mobility.

## 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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§ 54.1-201 A 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.

§ 54.1-1102 A of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the statute necessary for the licensure of contractors and tradesmen.

### 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's intended to solve.*

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This regulatory change will remove a price cap that has been in place since 1995, as well as an obsolete section.

By removing the cap, the Board is allowing the Virginia Public Procurement Act to function as designed, ensuring that all contract negotiations and implementations are done in accordance with the law. Removing an obsolete will allow for more clear regulations.

### 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.*

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This regulatory change will remove a price cap that has been in place since 1995 and an obsolete section.

### 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.*

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The primary advantage to this regulation change will result in vendors who might not otherwise bid on the contract because of a cap, and could potentially other services that would better benefit the citizens of the Commonwealth.

Removing obsolete sections provide clarity within the regulations.

The primary advantages to the agency is that we'll better serve our customers, while the Commonwealth and the agency supports workforce development and promote a positive business climate. No disadvantages to the agency 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.*

No requirement of this regulatory change is more restrictive than federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "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

Localities Particularly Affected

No localities are particularly affected.

Other Entities Particularly Affected

No other entities are particularly affected.

### Economic Impact

*Pursuant to § 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 change versus the status quo.*

**Summary:**

The Board for Contractors is amending the regulations for Contractors. The Board currently adheres to the provisions of the Virginia Public Procurement Act for procuring examination services and the agency proposes to remove the cap specified in regulation to allow the contracts be negotiated within the provisions of the act without the cap. This will allow for expanded services to include, but are not limited to, additional language services and remote proctoring. The board has determined the cap on exam fees was problematic when attempting to expand exam services to include multiple languages. Offering examinations, and applications, in languages other than English will eliminate barriers for individuals and companies with individuals whose first language is not English. The regulatory change will remove a price cap that has been in place since 1995. There is no economic or fiscal impact to state agencies and businesses. Contractor's exam fees could potentially be higher but it is dependent on the negotiated contract.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (DPOR) and funded through fees paid by applicants and regulants. All boards within DPOR 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. DPOR allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies. The Board has no other source of income.

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  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>There are no projected additional costs to DPOR resulting from this regulation change.</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 savings and no changes to 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>The primary benefits of the regulatory change to DPOR and the Board for Contractors is that it supports workforce development and promote a positive business climate. It removes the price cap and allows the Virginia Public Procurement Act to function as designed, ensuring that all contract negotiations and implementations are done in accordance with the law.</p>

**Impact on Localities**

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>None.</p>

**Impact on Other Entities**

<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>Contractors applying for a Contractor's license or adding a specialty to an existing license are required to have a qualified individual pass an examination. No other individuals, businesses or other entities are affected.</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;</p>	<p>In fiscal year 2021, there were 4,153 new applicants and 602 add a specialty applicants. Similar numbers of applicants are expected in future fiscal years. Most applicants are considered small businesses.</p>

<p>b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</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:                  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>	<p>a) Exam fees could potentially be higher but it is dependent on the negotiated contract between the Board and the exam vendor. The fees may be adjusted and charged to the applicant in accordance with the negotiated contract. b) There are no real estate development costs resulting from the change, c) There are no fees related to the change, d) No equipment or services are needed to be purchased from this change, and e) No specific additional time is required.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The benefit of the regulatory change supports a workforce development and promotes a positive business climate. Also, it will result in vendors who might not otherwise bid on the contract due to the cap, and could potentially offer other services that would better benefit the public. Exams will be able to be offered in Spanish and potentially other languages which will reduce barriers to obtaining a license for those whose first language is not English.</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.*

There are no alternatives to this regulations.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B 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.*

This regulatory change does not adversely impact small businesses in the Commonwealth.

**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.

As required by § 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 Marjorie King c/o Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, telephone (804) 367-2785, fax (866) 430-1033, email: [contractor@dpwr.virginia.gov](mailto:contractor@dpwr.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

**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
18 VAC 50-22-20		The examination fee shall consist of the administration expenses of the Department of Professional and Occupational Regulation ensuing from the board's examination procedures and	With the regulation change, the not to exceed price would be removed. Instead, the regulations would state that fees may be adjusted and charged to the applicant in accordance with the contract held.

		contract charges. Exam service contracts shall be established through competitive negotiation in compliance with the Virginia Public Procurement Act (§ 11-35 et seq. of the Code of Virginia). The current examination shall not exceed a cost of \$100 per element to the candidate.	
18 VAC 50-22-100		The exam fees outlined in the Board's fee chart is \$20 for Qualified Individual exam fee, \$40 for Class B exam fee, and \$60 for Class A exam fee. It states examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.	Exam fees and statement would both be removed as the Board no longer gives examinations in-house.