



Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18VAC50-22
Regulation title	Temporary Licenses
Action title	Board for Contractors Temporary License Provisions
Date this document prepared	July 19, 2010

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A. 4. of § 2.2-4006.

- 1) Please explain why this is an emergency situation as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

1. This is an emergency situation pursuant to § 2.2-4011 of the Code of Virginia. Chapters 260 and 280 of the Acts of the 2010 General Assembly, which were the result of SB 474 and HB 792 respectively, require regulations to be effective within 280 days of enactment.
2. The proposed regulation changes the existing regulation to include a provision that addresses temporary license requirements pursuant to the above-named Chapters.

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., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary. Please include a citation to the emergency language.

Section 54.1-1102 states in part that the Board shall have the power and duty to promulgate regulations to carry out the requirements of Chapter 23.3 of Title 54.1 of the Code of Virginia. Section 54.1-201.1 authorizes regulatory boards within the Department of Professional and Occupational Regulation to issue temporary licenses and certificates to applicants that meet specified criteria. Enactment clause 2 of Chapters 260 and 280 of the 2010 Acts of Assembly requires that regulatory boards within the Department shall promulgate regulations to implement the provision of this act to be effective within 280 § 54.1-201(E) states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board.

The content of the regulations adopted by the Board shall not be in conflict with the purposes of the statutory authority.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The proposed amendments address temporary licensure for Contractor entities pursuant to Chapters 260 and 280 of the Acts of the 2010 General Assembly, which were the result of SB 474 and HB 792. The amendments state that the Board for Contractors will issue temporary licenses.

The amendments to the statutes introduce “Temporary License” to the regulatory authority of the Board for Contractors. These regulations will define entry requirements, list fees and the disciplinary authority of the Board for this license.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

The General Assembly determined boards within the Department of Professional and Occupational Regulation needed to develop regulations to address temporary licensure and certification

The Board for Contractors determined that the issuance of Temporary Licenses would help protect the health, safety, and welfare of the citizens of Virginia by assuring those Contractors entering the state of Virginia, and who apply for licensure, do not have to wait through the delay in the normal licensing process. The issuance of Temporary Licenses would allow companies to bid on or do contracting work faster than if those companies had to wait through the normal licensing process. Additionally, Temporary Licenses provides protection to consumers as Temporary Licensees are subject to the rules, regulations and disciplinary processes of the Board during the period of Temporary Licensure. The Contractor’s Union also supports Temporary Licenses for Contractor entities.

Substance

Please detail any changes that will be proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate.

Some of the changes proposed are administrative in nature and add “temporary license” to the general definitions section of the Regulations and add the fees associated with obtaining a “temporary license.”

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18VAC50-22-10	N/A	General Definitions	The general definitions section will now include the definition of a “temporary license” under Board for Contractors jurisdiction.
18VAC50-22-100	N/A	Fees	The fees section will now include the fee required for a Temporary License application fee under the Board for Contractors.

Other changes include the addition of the following:

18VAC50-22-65	The “Temporary Licenses” section will outline the requirements necessary to apply for and obtain a Temporary License and the Board’s authority over such licenses.
18VAC50-22-66	This new section will outline the Board’s disciplinary authority over Temporary Licenses.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also describe the process by which the agency has considered or will consider, other alternatives for achieving the need in the most cost-effective manner.

Since this is a new program no other alternatives exist for amending the regulations in order to bring them into compliance the Code of Virginia. At this time, no alternative has been established for amending current definitions, the procedures for obtaining a temporary license, or the fees associated with this program, however, it is likely that many alternatives will be presented during the public comment periods.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public meeting is to be held to receive comments on this notice.

The Board is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency/board is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) 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 for the public comment file may do so by mail, email or fax to Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, fax to (804) 1-866-430-1033, or email to contractors@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 day of the public comment period.

A public meeting will be held and notice of the meeting 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.

Participatory approach

Please indicate the extent to which an ad hoc advisory group or regulatory advisory panel will be used in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board will use the participatory approach to develop a proposal if it receives at least 15 written requests to use the participatory approach prior to the end of the public comment period. Persons requesting the agency use the participatory approach and interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and their organization (if any). Notification of the composition of the advisory panel will be sent to all applicants.

Family impact

Assess the potential 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.

No impact on families in Virginia has been identified as resulting from the proposed amendment to the regulation.