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Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 50 – 30 – 40
VAC Chapter title(s)	Board for Contractors Individual License and Certification Regulations
Action title	Backflow Vocational Training
Date this document prepared	February 1, 2021

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.

The Board for Contractors seeks to lower the current vocational training requirement for Certified Backflow Prevention Device Workers who have less than seven years of experience in water distribution systems. The current requirement is 40 hours and the Board is proposing to lower it to 32 hours.

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 definitions used in this form that are not specifically identified.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

On July 7, 1999, the Board for Contractor promulgated regulations, as a result of a legislative mandate, to certify individuals that performed inspections on backflow prevention devices. The Board based many of its eligibility requirements on those already in place for regulatory bodies throughout the United States and by national certifying organizations. Since that time the experience and vocational training requirements have not changed by the Board for Contractors.

Over the course of the past several months the Board has been contacted by individuals interested in becoming certified in Virginia, who have experienced difficulty finding a 40 hour vocational training class, which is required for individuals that have less than seven years of experience with water distribution systems. These individuals have indicated that, while a few providers still offered 40 hour classes, the majority had shifted to 32 hour classes. This was done in large part because a significant number of regulatory agencies and national certifying organizations had changed their education requirements from 40 hours to 32 hours.

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.

§ 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 certification of backflow prevention device workers.

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.

The Board for Contractors is responsible for regulating businesses and individuals engaging in work within the construction and trade industry. Part of that responsibility is to develop entry level eligibility criteria that afford protection to the public while, at the same time, are not overly burdensome to those seeking licenses or certifications. Since 1999 the Board has certified individuals as backflow prevention device workers and set entry standards that were, at the time, reasonable and not overly burdensome. When developing these initial entry criteria the Board reviewed the requirements of those other states that regulated the backflow industry. Additionally, the Board reviewed the certifying criteria set forth by national certifying agencies active in the industry. Since that time several states and organizations have changed their initial entry criteria, reducing the number of vocational training hours. In response, several of the approved vocational training providers, who are generally approved in other states as well as

Virginia, have stopped offering some of the longer certification courses. This has directly resulted in applicants for a backflow certification in Virginia experiencing difficulty in finding vocational training courses that meet the requirements set forth by the Board for Contractors.

In response to comments that have been received over the past several months, the Board researched the vocational training criteria in several states and found that four of six neighboring states that regulate backflow testers have vocational training requirements that are less than those of Virginia. Additionally, while there is no training requirement that is prevalent throughout the United States, of the dozen programs reviewed, only three required the same amount of vocational training as Virginia, the others were lower.

In response to the comment received from applicants and the research done by board staff, the Board for Contractors determined that an amendment to the current requirements was appropriate.

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.

18 VAC 50-30-40 would be amended to lower the formal vocational training requirement of individuals with a minimum of four years, but less than seven years of experience from 40 hours to 32 hours.

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.

The primary advantage for individual private citizens is the fact that applicants for the backflow certification will no longer experience difficulty in finding vocational training courses, potentially allowing for more businesses to employ certified individuals.

There are no disadvantages to the public, private citizens, businesses or the Commonwealth.

This regulatory change will align the Commonwealth’s requirements with The University of Florida, Training, Research and Education for Environmental Occupations (UF TREEO), one of the most prominent national certifying agencies, and other states and localities throughout the United States.

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 currently no Federal requirements for licensure or certification as a backflow prevention device worker.

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 other 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.

Board for Contractors Economic and Fiscal Impact of Proposed Regulation

Summary: The Board for Contractors is amending the regulations for Certified Backflow Prevention Device Workers. The Board proposes to reduce the vocational training requirement to 32 hours for Certified Backflow Prevention Device Workers who have less than seven years of experience in water distribution systems. Applicants for backflow certification will no longer experience difficulty in finding vocational training courses, potentially allowing for more businesses to employ certified individuals. There is no economic or fiscal impact to state agencies or businesses. Some individuals will realize an economic benefit.

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:</p> <ul style="list-style-type: none"> 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>There are no savings and no changes to costs, fees, or revenues of DPOR resulting from this regulatory change. Any increase in applications can be absorbed by current staffing resources.</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 benefits of this regulatory change are for the individual applicants affected. No benefit is expected to be realized for state agencies.</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>The regulatory change will affect all applicants for certification as a Certified Backflow Prevention Device Worker. 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:</p> <ul style="list-style-type: none"> 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>As of 1/1/2021, there are 1,477 certified backflow prevention device workers in Virginia and there were approximately 160 new applicants in Fiscal Year 2020.</p> <p>No businesses are affected by this change.</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>The affected applicants would have 8 fewer vocational training hours to take. This could result in a cost savings to the applicant in situations when the 32 hour vocational training costs less than the 40 hour vocational training. Training costs vary by training provider. Some applicants will not realize any savings from this change.</p>

Benefits the regulatory change is designed to produce.	Certified Backflow Prevention Device Worker applicants will be able to take 32 hours of vocational training which is more readily available than 40 hour vocational training. The 32 hour requirement is more consistent with many other states.
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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 permanent alternatives to this regulatory action that would meet the requirements of its purpose.

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 establishes less stringent entry requirements than are currently in place. Other than the elimination of the program or having no education requirements in place, these are the most consistent with those changes that have already been made within the industry in many locations. Since the majority of licensees that provide this service are affiliated with a small business it would not be necessary to exempt them. Additionally, the reducing of the education requirement may result in a slight decrease in the cost to all businesses that employ these individuals.

Periodic Review and Small Business Impact Review Report of Findings

If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This document is not being used to announce a periodic review or a small business impact review.

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
Charles Fulcher	I am in agreeance with reducing the hours from 40 to 32.	Thank you for your comment.
William Dunn – Local 10 Plumbers & Steamfitters	Backflow Prevention Programs protect the public’s potable water supply. The training should be more intensive and updated more not less. It’s public safety not a clogged sink.	Thank you for your comment.
James Beasley	Supports continued licensing of Backflow Prevention Device Workers.	This comment was directed to a study completed by the BPOR and was forwarded to the correct department.

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.

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, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of 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@dpor.virginia.gov. 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 this 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.

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 – 30 – 40 D 1		Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board.	With the regulation change, the applicant will now be required to completed 32 hours of vocational training if they have four years of experience.