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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation(s)</b>	18 VAC 50-30
<b>Regulation title(s)</b>	Board for Contractors Individual License and Certification Regulations
<b>Action title</b>	Amendments to Improve Application Integrity
<b>Date this document prepared</b>	November 19, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

These proposed regulatory amendments will increase the integrity of the information used by the Board for Contractors to determine eligibility for licensure. There are no changes to the requirements themselves; experience levels, education requirements, and exam requirements all remain the same. Documentation to verify these requirements will change to ensure accuracy and integrity of the information submitted as part of the application. This includes the submission of identification for the individual submitting the application, third party verification of experience, verification of education, and other similar requirements. Current regulations currently leave the choice of documentation, when required, to be determined by the licensing staff. These amendments will make the documentation more uniform and consistent.

## Acronyms and Definitions

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.*

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There are no acronyms used in this document that have not been defined in the regulations.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person's overall regulatory authority.*

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Section 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

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During the past eighteen months, several instances involving the submission of false documentation, forged verification forms, and questionable identity have been brought to the attention of the Board for Contractors. The majority of these instances have resulted in disciplinary action being taken against the licensee or certificate holder, usually in the form of the revocation of the license or certificate, and a monetary sanction. To date nearly 100 such cases have been adjudicated by the Board or are scheduled to be heard by the Board, and there are more than 100 currently in the investigative stages.

A review of these cases has found that the Board's current documentation requirements are insufficient to ensure that the information being provided by the applicant is valid. This includes, but is not limited to, verification of identification, experience documentation, determination of fiscal responsibility, and verification of employment status. The application process has been modified somewhat, in those areas that do not require an amendment of the regulations, but the Board has identified other requirements that should be implemented to reduce the instances of application fraud.

The Board is tasked with ensuring that individual licensees and certificate holders meet minimum competency standards to ensure that the public is protected from unqualified or incompetent individuals that are performing work that, if done improperly, can have a direct effect on the safety of the public. In order to ensure that these minimum standards are met it is critical that the documentation reviewed by the Board to determine license and certification eligibility is accurate and trustworthy.

## Substance

*Please 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.*

Section 18 VAC 50-30-20: The Board will amend this section to clarify that the board may approve the applicant to take the applicable exam or issue the license or certificate.

Sections 18 VAC 50-30-30: The Board will amend this section to include submission of identification and a 2" x 2" photo deemed necessary by the Board for proper identification of the applicant that is applying.

Section 18 VAC 50-30-40: The Board will amend this section to include submission of experience verification deemed necessary by the Board to meet the statutory and regulatory requirements.

## Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

- 1) The primary advantage to the public is that these regulations will help to ensure that the license holders actually meet the minimum competency requirements to get a license and the public can feel more confident that the license wasn't acquired fraudulently. The disadvantage to applicants applying for licenses is that they will need to provide licensing staff with more supporting paperwork.
- 2) The primary advantage to the agency is there will be fewer investigations on license holders for acquiring the license fraudulently. The disadvantage to the licensing staff is that they will need to do more research before issuing the license.
- 3) There are no other pertinent matters of interest.

## Requirements more restrictive than federal

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include 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 statement to that effect.*

There are no requirements in this proposal that are more restrictive than applicable federal requirements.

## Localities particularly affected

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

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There are no localities that will be particularly affected by these proposed regulations.

### Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.*

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The agency is seeking comments on this regulatory action, including but not limited to: ideas to be considered in the development of this proposal, the costs and benefits of the alternatives stated in this background document or other alternatives and the potential impacts of the regulation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Eric Olson, c/o Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233; email: [contractor@dpor.virginia.gov](mailto:contractor@dpor.virginia.gov); fax (866) 430-1033. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

A public hearing will be held following the publication of the proposed stage of this regulatory action and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

The agency is using the participatory approach in the development of the proposal. Pursuant to the Public Participation Guidelines, 18 VAC 50-11-10 *et seq.*, a panel will not be used.

### Economic impact

*Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.*

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## **Board for Contractors Economic and Fiscal Impact of Proposed Regulation**

### **Summary:**

The Individual License and Certification Regulations under the Board for Contractors are being amended to include a requirement that applicants submit a passport-type photo with each individual license and

certification application. The new requirement will help to ensure that the public is protected from unqualified or incompetent individuals. This in turn helps to ensure individual licensees and certificate holders have met the minimum competency standards to protect the public. No fiscal impact to the state is expected from this change. A nominal cost to the applicant is expected.

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

**Economic Impact:**

<p><b>Projected cost to the state to implement and enforce the proposed regulation, including:</b></p> <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> <p><b>See Fiscal Impact by year below:</b></p>	<p>There are no projected costs to the state to implement and enforce the specifics of this proposed regulatory action.</p>
<p><b>Projected cost of the new regulations or changes to existing regulations on localities.</b></p>	<p>There are no projected costs to localities.</p>
<p><b>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</b></p>	<p>Individuals that apply for a license or certification are affected by this change to the regulations.</p>
<p><b>Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected.</b> Small business means a business entity, including its affiliates, that:</p> <p>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>Individual license and certificate applicants have averaged more than 2,000 per year over the last five years. Small businesses are not affected.</p>
<p><b>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including:</b></p> <p>a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>Individual license and certificate applicants may incur the cost of obtaining a passport type photo. The average cost of passport photos is \$15.00.</p>

<p><b>Beneficial impact the regulation is designed to produce.</b></p>	<p>The new requirement will help ensure that the public is protected from unqualified or incompetent individuals. This in turn helps to ensure individual licensees and certificate holders have met the minimum competency standards designed to protect the public.</p>
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## Alternatives

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.*

No viable alternatives have been identified at this time.

## Regulatory flexibility analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please 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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of 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 proposed regulation.*

- 1) The establishment of less stringent compliance or reporting requirements may allow applicants that do not meet the minimum competency standards to acquire a license that could have a direct impact on the safety of the public.
- 2) No changes to established schedules or deadlines for compliance are being proposed.
- 3) The promulgation of these regulations will actually bring a consolidation and simplification to the application process as it will establish reporting and documentation requirements that will be consistent for all applicants for a licensure or certification.
- 4) Notwithstanding the fact that the vast majority of individual license and certificate holders are either independent or work for small businesses, most of these proposed amendments contain a clause that allows the Board to consider alternative documentation. That would allow a business that is either unable to obtain or finds it prohibitively difficult to obtain, the required documentation, the opportunity to have an alternative method explored through a review of the application by the Board. That particular process is already in place and is used occasionally by applicants for licensure.
- 5) The majority of the regulants are either independent or employed by small businesses. Exempting them from the proposed requirements would be contrary to the responsibility of the Board to protect the public by ensuring that only those individuals who meet minimum requirements are permitted to be licensed.

## 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 was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (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.*

This form is not being used to report the result of a periodic review/small business impact review.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.*

No public comments were received.

**Family impact**

*Please assess the impact of this 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.*

The proposed amendments would have no impact on the institution of the family and family stability.

**Detail of changes**

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.*

For changes to existing regulation(s), please use the following chart:

Current section number	Proposed new section number, if	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
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	applicable		
18 VAC 50-30-20		The current requirement states that after the applicable exam has been completed, the applicant can then submit an application to the board. If an application is satisfactory to the board, a license or certification card shall be issued.	The proposed change clarifies that the board may either approve the applicant to take the exam or issue the license or certification card. This policy has already been in place and the board is clarifying this in the regulations.
18 VAC 50-30-30		The regulations currently have several general qualifications for licensure including, but not limited to, being 18 years old, disclosing his physical home address, and disclosing criminal history.	The new requirements will also include the applicant providing a copy of a government issued ID and a 2"x2" passport photo. This will help the board ensure that they issue the license or certificate to the correct person applying and that the same person is the one who actually takes the examination if applicable.
18 VAC 50-30-40		<p>The current regulations require that each applicant submit practical experience within the trade that they are applying for.</p> <p>This section states that a master tradesman can qualify by holding a journeyman license for one year.</p> <p>This section also states that individuals that passed the Class A contractors trade examination prior to January 1, 1991, shall be deemed to hold a master license.</p>	<p>The new regulations will require that the experience submitted is verified specifically by a building official, building inspector, registered design professional, licensee of the Board for Contractors, licensee of another regulatory agency, or other individual/organization approved by the board. This change will help the board to ensure the experience verification provided is legitimate.</p> <p>The new regulations will simply clarify that the journeyman license must be a Virginia journeyman license.</p> <p>The new regulations will change the "shall" to "may". This gives the board the ability to review each case instead automatically giving these applicants a license.</p>