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Final Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation(s)	18 VAC 50-30
Regulation title(s)	Residential Building Energy Analysts
Action title	Board for Contractors – Residential Building Energy Analysts
Date this document prepared	April 22, 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 of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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.

The Board for Contractors seeks to amend its Individual License and Certification Regulations to include “Residential Building Energy Analysts” among the types of licenses issued. The proposed amendments include the addition of a establishment of eligibility criteria for such a license, list the fees associated with such a license, addition of prohibits acts for such a license and identify other administrative requirements.

The proposed regulations would replace the emergency regulations that have been in effect since July 1, 2013.

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.

There are no acronyms used in the Agency Background Document.

Statement of final agency action

Please 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.

The Board for Contractors adopted the amended regulations to include “Residential Building Energy Analyst Firm” licenses to the Board for Contractors Individual License and Certification Regulations on April 14, 2015.

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.

Section 54.1-1146 authorizes the board for contractors to issue residential building energy analyst licenses and residential building energy analyst firm licenses to applicants that meet specified criteria. Enactment clause 2 of Chapter 865 of the 2011 Acts of Assembly requires that the board for contractors shall promulgate regulations to implement the provision of this act to be effective within 280 days. § 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.

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.

The proposed amendment addresses residential building energy analyst licensure for firms as required by Chapter 865 of the Acts of the 2011 General Assembly, which were the result of SB 1375.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The Board seeks to amend its Individual License and Certification Regulations to include a fee for “Residential Building Energy Analyst” and to bring “Residential Building Energy Analyst” license holders under the Board’s jurisdiction and disciplinary authority.

18 VAC 50-30-40: Amending the regulations to include entry requirements for “Residential Building Energy Analyst” license applicants.

18 VAC 50-30-90: Amending the regulations to include a “Residential Building Energy Analyst License” fee of \$130.

18 VAC 50-30-120: Amending the regulations to include “Residential Building Energy Analyst License” renewal requirements and a renewal fee of \$90.

18 VAC 50-30-130: Amending the regulations to include “Residential Building Energy Analyst License” reinstatement requirements and a fee of \$140.

18 VAC 50-30-185: Amending the regulations to include language that “Residential Building Energy Analysts” are subject to disciplinary action from the board if found in violation of the statutes or regulations.

18 VAC 50-30-190: The filing of charges and prohibited acts were updated to include “Residential Building Energy Analysts.” This amendment also includes the addition of two prohibited acts specifically for “Residential Building Energy Analysts.”

18 VAC 50-30-200: Amending the regulations to include vocational training requirements for “Residential Building Energy Analysts.”

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 housing industry is taking great strides in constructing homes that are energy efficient. The building codes for residential construction will also reflect some of these newer construction techniques. Part of the industry changes are to ensure that new homes are constructed in accordance with the standards set forth by the Building Performance Institute and the Residential Energy Services Network and that work done retroactively to existing structures meets similar industry standards. It is imperative that individuals who are responsible for the

inspection of a residential property to evaluate or measure the energy consumption and efficiency of that property are adequately trained and licensed. Additionally, financial criteria set forth in these proposed regulations, including the requirement that a licensee be properly insured, helps protect the public from damages that could occur during the testing process. The protection and assurance of properly trained individuals and firms is the primary advantage of these regulations. Since the decision to have an energy analysis done on one's home is voluntary, there is no disadvantage to the public.

- 2) Virginia was the first state to require the licensure of Residential Building Energy Analysts (individuals) and, by doing so, can be viewed as being very proactive within the residential energy industry and consumer protection arenas by ensuring that these energy analyses are done by properly trained individuals working for financially protected companies.
- 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.

While the Energy Star program is monitored at the Federal level and has requirements that must be met to become Energy Star rated, there is no current licensing or regulatory requirements for those who perform residential building analyses. The requirements that are in place are those that are generally accepted by the national certifying organizations and are not more restrictive than those already in place.

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.

There will be no localities particularly affected by this proposed regulatory action.

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.

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

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation and the rationale for the changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. *Please put an asterisk next to any substantive changes.*

There are no changes to the text of the proposed regulations.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate. Please distinguish between comments received on Town Hall versus those made in a public hearing or submitted directly to the agency or board.

Commenter	Comment	Agency response
Billy Weitzenfeld, AACP	Requested clarification if the entry requirement in 18 VAC 50-30 that requires an applicant to complete a minimum of five residential building analyses under the supervision of a licensed RBEA, was also a requirement for renewal. He stated that it might be helpful to list those requirements for first time applicant vs. those requirements for renewals if there are differences.	Staff responded to this comment explaining that the entry requirements for the license are in 18 VAC 50-30-40 and the renewal requirements are listed separately in 18 VAC 50-30-120. The requirement to complete a minimum of five residential building analyses under the supervision of a licensed RBEA is an entry requirement and not a renewal requirement.

All changes made in this regulatory action

Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections. Explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18VAC50-30-40		Evidence of Ability and Proficiency Section.	The amendments to this section outline the eligibility criteria for licensure as a residential building analyst. These

			<p>requirements clarify those listed in the statute licensing requirements.</p> <p>Language requiring information regarding financial status (required by § 54.1-1145 B 5), is new and not currently a requirement for any of individual licensing and certification programs under the authority of the Board for Contractors However, businesses holding a contractor license issued by the Board, must provide financial information in order for the Board to determine the applicants financial stability prior to licensure. The language used for contractor businesses was adapted for individuals and provides the Board with the same information used to determine the financial stability of licensed contractors</p> <p>§ 54.1-1145 C 4, requires “necessary insurance coverage as determined by the Board.” In determining the amount and type of coverage required the board contacted the only other state found that actually regulates this profession. While other states accept and promote the independent certification of energy auditors and analysts, only Missouri was found to have an actual regulatory program in place. The Missouri Department of Natural Resources certifies home energy auditors and, as a prerequisite for that certification, requires that the company maintain \$100,000 of liability insurance, however there is no requirement for individuals to be insured. The Energy Star program, while not requiring insurance for those individuals who certify homes for Federal Tax incentives, does suggest that businesses have liability insurance in place, there is no recommendation made for individuals who are not an employee of a business that performs energy analyses. The Residential Energy Services Network (RESNET), a widely accepted certification program, requires members to hold \$500,000 of liability insurance as a requirement for certification. The Building Performance Institute, another widely accepted certification program, requires \$1,000,000 of liability insurance as a requirement for certification. Costs of insurance vary widely, based on amount of coverage, types of coverage, deductibles, past claim history and underwriting,</p>
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			<p>however a quick survey of local companies indicates that liability insurance in the range of \$500,000 to \$1,000,000 was available for an annual price of \$600-\$1500 depending on the coverage variable chosen. The Board determined that a \$100,000 minimum insurance requirement for an individual, not employed by a licensed firm, would provide adequate coverage and not be overly burdensome on the licensee. The Board opted to exempt any individuals who are bona fide employees of licensed firm, from holding their own insurance, as they would be covered by the firm's policy. Additionally, after reviewing types of insurance, the Board determined that general liability would provide the most protection to the public.</p>
18VAC50-30-90		Fees for Licensure and Certification.	<p>The proposed change includes the cost of obtaining a "Residential Building Energy Analyst" license. The cost is equal to the fees currently in place for all other individual licenses and certifications under the authority of the Board for Contractors.</p>
18VAC50-30-120		Renewal.	<p>The proposed change includes the cost of renewing a "Residential Building Energy Analyst" license. The cost is equal to the renewal fees currently in place for all other individual licenses and certifications under the authority of the Board for Contractors. This section also provides requirements that must be met as a condition of renewal, all of which are a requirement of initial licensure.</p>
18VAC50-30-130		Reinstatement.	<p>The proposed change includes the cost of reinstating a "Residential Building Energy Analyst" license. The cost is equal to the fees currently in place for all other individual licenses and certifications under the authority of the Board for Contractors.</p>
18VAC50-30-185		Revocation of Licensure or Certification.	<p>The proposed change would add "Residential Building Energy Analyst" to the revocation authority already provided to the Board for other programs.</p>
18 VAC50-30-190		Prohibited Acts.	<p>Two new prohibited acts are added that are specific to residential building energy analyst for failure to ensure that analyses are completed in accordance with the standards set forth by the Board, the U.S. Environmental Protection Agency, the U.S. Department of Energy and the Energy Star Program, for the completion of residential building energy analyses. A second</p>

			prohibited act makes it a violation not to maintain required liability insurance at any time during licensure.
18 VAC50- 30-200		Vocational Training.	This proposed changes includes the requirement that residential building energy analyst complete training in a program approved by the board as required by Virginia Code §54.1-1145.