



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Board for Contractor Regulations
Action title	Review of the Board for Contractors Contract provisions
Date this document prepared	April 1, 2013

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*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board seeks to amend its current regulations to expand the prohibited. The proposed amendment would include a requirement that language be added to all residential contracting to notify consumers of the existence of the Virginia Transaction Recovery Fund and to add information on how to contact the Board for claim information.

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 technical terms or acronyms in this document that are not 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.

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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve.

The proposed amendments will address Board concerns to increase consumer awareness about the existence of the Virginia Transaction Recovery Fund (the Fund). Amending these regulations will offer an extra layer of protection to the health, safety and welfare of the general public. Also, the intent of the planned regulatory action is to review the existing regulations and propose amendments to empower the board to take disciplinary action against licensees who failed to comply with such amendments.

Substance

Please briefly identify and explain new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

Section 18 VAC 50-22-260 of the Board for Contractor regulations outlines the Board's prohibited acts which includes contract provision requirements. The proposed amendments will expand the terms of the written contract requirements for residential contracting specified within the Board's regulations.

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 the regulatory action poses no disadvantages to the public or the Commonwealth, please indicate.

- 1) The change is implemented to include a requirement that language be added to all residential contracts notifying consumers of the existence of the Virginia Transaction Recovery Fund and to add information on how to contact the Board for claim information. This change would be advantageous to the consumer as it would provide pertinent information regarding a level of protection, currently in the statutes, but often not known to consumers. The addition of contact information would give direction to consumers, who could then contact Recovery Fund staff for assistance in filing a claim or in determining eligibility.
- 2) In amending the regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. The proposed amendment will aid to increase consumer awareness about the existence of the Virginia Transaction Recovery Fund (the Fund) and offer an extra layer of protection to the health, safety and welfare of the general public.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, and the public.

Requirements more restrictive than federal

Please identify and describe any requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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 the proposed regulations that would be more restrictive than those currently required in Federal Law.

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.

No localities will be particularly affected.

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.

The agency is seeking comments on this regulatory action, including but not limited to 1) ideas to be considered in the development of this 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 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) the probable effect of the regulation on affected small businesses, and 3) 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; 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.

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 requirements creates the anticipated economic impact.

Board for Contractors **Fiscal Impact of Proposed Regulation**

Summary:

The current regulations of the Board for Contractors are being updated. The regulations will require residential contractors to include language in their contracts that notifies consumers of the existence of the Virginia Transaction Recovery Fund and how to contact the Board for claim information. No financial or economic impact to the board, applicants, or regulants is expected as a result of these changes.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. 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.

Fiscal Impact:

	FY 2013	FY 2014	FY2015	FY2016
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0
Total Fiscal Impact	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

Description of Costs:

One-Time: No one-time costs are expected as a result of this regulatory change.

Ongoing: No ongoing costs are expected as a result of this regulatory change.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: This regulation change will affect all licensed contractors providing residential services.

Estimated Number of Regulants: As of February 1, 2013, the Board regulates 65,274 Class A, B, and C Contractors.

Projected Cost to Regulants: There is no anticipated additional cost to the regulants.

**Board for Contractors
Financial Status and Projections
Current Regulations**

Biennium	Beginning Cash Balance	Revenues	Expenditures	Ending Cash Balance	Callahan Act %
20010-12	964,975	20,458,901	15,819,582	5,604,294	35.4%
2012-14	5,604,294	20,108,701	18,789,229	6,923,766	36.8%
2014-16	6,923,766	20,184,048	19,547,379	7,560,435	38.7%
2016-18	7,560,435	20,184,048	20,383,232	7,361,251	36.1%

Number of Regulants

65,274 Contractors as of February 1, 2013
 30,470 Individuals as of February 1, 2013

Fee History \$

Major Fee Type	2005	2010
Individual Application Fee	90	130
Class A Contractor Application Fee	200	360
Individual Renewal Fee	40	90
Class A Contractor Renewal Fee	165	240

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.

In reviewing the regulations, the Board considered whether there was a less burdensome alternative. The Board weighed those alternatives against the burden to its own regulant population, especially small businesses. Alternatives that failed to meet this consideration were rejected.

The Board will consider all comments received during the public comment period as to proposed alternatives.

Regulatory flexibility analysis

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.) These proposed regulations establish compliance or reporting requirements equal to or less stringent than those already in places.
- 2.) There are no deadlines or reporting requirements required by these proposed regulations.
- 3.) There are no reporting requirements proposed by these regulations.
- 4.) There are no performance standards proposed by these regulations.
- 5.) The overwhelming majority of businesses licensed as contractor by the Board for Contractors are small businesses, subsequently, every regulatory action undertaken by the Board affects small businesses. The Board for Contractors must promulgate regulations that provide an adequate level of protection to the public while, simultaneously ensuring that individuals and businesses are not given unnecessary burdens to licensure. The amendment is intended to further strengthen that protection and, while these amendments may raise some concerns within the regulated community, and thus become a matter of interest, they will not likely be looked at as being overly burdensome to most of the regulant population or the industry. The Board believes that these amendments are the least stringent that can be promulgated that will still deliver that protection.

Public comment

No comments were received during the public comment period.

Family impact

Please assess the 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.

These amendments will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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 list separately (1) all differences between the pre-emergency regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulation(s), use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 50-22-260			Adds item “j” to subsection B9 in order to make this item a violation of the regulations that are subject to sanction, if a contractor fails to follow or comply. This amendment came as a result of a work group, established by the Board for Contractors, to review current Transaction Recovery Fund statutes, regulations, policies, and procedures. The work group was made up of industry representatives, board members, board counsel, and a citizen who had a claim against the Fund denied due to a technical interpretation of the law. The work group made two statutory recommendations, which became HB 1801 and HB 1802, both of which will become effective on July 1, 2013, and one regulatory recommendation. The addition

			<p>of a requirement that consumers be notified of the existence of the Recovery Fund at the initial transaction point, will allow them the opportunity to become familiar with the eligibility criteria for the filing of a claim. The vast majority of claim denials are the result of consumers not following the requirements set forth in the statutes pertaining to the judgment language and follow-up requirements. This addition to the contract requirements is a simple and non-burdensome way to give consumers notification of those requirements up-front which, at the least, will result in contact with the Recovery Fund staff prior to the filing of a claim, ensuring that all criteria for payment have been met.</p>
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