



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Board for Contractors Regulations
Action title	Addition of Commercial Building Classification
Date this document prepared	October 29, 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 review and amend the definitions of classifications and specialties. The proposed amendments are required in order to comply with the provisions of Chapter 116 of the Acts of the General Assembly, approved on March 6, 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 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 Board seeks to amend the current regulations to include "Commercial Building Contractors" and "Residential Building Contractors." The proposed amendments are required in order to comply with the provisions of Chapter 116 of the Acts of the General Assembly, approved on March 6, 2013.

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.)

18 VAC 50-22-20 of the Board for Contractors Regulations defines the scope of practice allowed for each classification. The proposed amendments would add the classification of commercial building contractors and outline the scope of practice this classification is permitted to perform. It would also amend the current definition of building contractor, changing it to residential building contractor, and would change the definition so that it would only reference residential work.

18 VAC 50-22-30 of the Board for Contractors Regulations defines the scope of practice allowed for each specialty. The proposed amendments would change the definition of any specialty that would require a reference to the new commercial building contractor classification.

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) In amending these regulations, the Board for Contractors is complying with the provisions of legislation signed into law this year establishing the requirement for “Commercial Building Contractors” and “Residential Building Contractors.” The General Assembly determined a need for this level of regulation in order to protect the public. One advantage to these amendments is to ensure that work done on both residential property and commercial property is performed by companies who have demonstrated enough experience to reasonably assume competency in the specific area they are licensed in. Another advantage to these amendments is to the commercial building contractors. The new legislation excludes contractors holding the commercial building contractor classification from paying into the Transaction Recovery Fund.

One possible disadvantage to amending these regulations is a contractor that performs both residential and commercial building, will need to apply for a contractor license with both classifications. The qualified individual will need to complete an exam for each classification. Another potential disadvantage is a decrease of the balance of the Transaction Recovery Fund. This decrease is expected to be minimal.

2) The primary advantage to the agency is that the revisions to the regulations will make it easier for investigations concerning the Transaction Recovery Fund. There are no disadvantages to the agency or the commonwealth.

3) There are no other pertinent matters of interest.

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 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.

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

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.

In addition to any other comments, the board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the board is 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 may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, email: eric.olson@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 date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* 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 (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). Both oral and written comments may be submitted at that time.

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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

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

Summary:

The current regulations of the Board for Contractors are being updated. The revision will make changes to the classification requirements in the regulations. The building classification will be divided into residential building and commercial building. With the change, the existing contractors with the building classification will receive both the residential and commercial building classifications. New applicants and existing contractors without the building classification if desired will need to choose which type of building classification they are seeking. One effect of this change is that applicants with only the commercial building classification will not be required to pay the Virginia Transaction Recovery Fund assessment. Based on estimates of a maximum number of commercial building-only applicants, the Recovery Fund would see a \$5,000 reduction in assessments collected annually. No other 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 2014	FY 2015	FY2016	FY2017
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 new or additional costs are expected as a result of this program addition and related new regulations.

Ongoing: None are expected.

Cost to Localities: No change anticipated.

Description of Individuals, Businesses, or Other Entities Impacted: All building classification applicants and licensed contractors with the building classification are impacted by the regulation changes.

Board for Contractors

**Financial Status and Projections
Current Regulations**

<u>Biennium</u>	<u>Beginning Cash Balance</u>	<u>Revenues</u>	<u>Expenditures</u>	<u>Ending Cash Balance</u>	<u>Callahan Act %</u>	<u>Number of Regulants</u>	
2010-12	964,975	20,458,901	15,819,582	5,604,294	35.4%	92,200	as of 9/30/2013
2012-14	5,604,294	19,254,985	16,581,338	8,277,941	49.9%		
2014-16	8,277,941	17,523,252	18,566,160	7,235,033	39.0%		
2016-18	7,235,033	17,523,252	19,462,463	5,295,822	27.2%		

Fee History \$

<u>Major Fee Type</u>	<u>2007</u>	<u>2010</u>
Individual Application	90	130
Individual Renewal	40	90
Class A Contractor Application including recovery fund assessment	225	385
Class A Contractor Renewal including recovery fund assessment	215	290

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.

Chapter 116 of the Acts of the 2013 General Assembly and the Code of Virginia mandate the promulgation of regulations to have residential building contractor and commercial building contractor as classifications for a contractor license. The Board determined that certain regulatory amendments were required to implement these statutory procedures and requirements.

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) These proposed regulations establish compliance or reporting requirements equal to or less stringent than those already in place.
- 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 Board believes that these amendments are the least stringent that can be promulgated that will still deliver that protection.

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 comment was received for this NOIRA.

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) or regulations that are being repealed and replaced, use this 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 50-22-20		Definitions of license classifications	The proposed change includes removing the definition of "Building Contractors" and adding the definitions of "Commercial Building Contractors" and "Residential Building Contractors."
18 VAC 50-22-30		Definitions of specialty services	The proposed amendments change the definition of any specialty that would require a reference to the new commercial building contractor and residential building contractor classifications. Specialties that need to be changed are: "Billboard/Sign Contracting", "Commercial Improvement Contracting", "Concrete Contracting", "Farm Improvement Contracting", "Home Improvement Contracting", "Industrialized Building Contracting", "Landscape Service Contracting", "Manufactured Home Contracting", "Marine Facility Contracting", "Masonry Contracting", "Painting and Wallcovering Contracting", "Radon Mitigation Contracting", "Recreational Facility Contracting", "Roofing Contracting", and "Swimming Pool Construction Contracting."