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Regulatory  
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## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 50-22-10 et seq.
<b>Regulation title</b>	Board for Contractors Regulations
<b>Action title</b>	Amend
<b>Document preparation date</b>	August 15, 2003

This information is required for executive review ([www.townhall.state.va.us/dbbpages/apaintro.htm#execreview](http://www.townhall.state.va.us/dbbpages/apaintro.htm#execreview)) and the Virginia Registrar of Regulations ([legis.state.va.us/codecomm/register/regindex.htm](http://legis.state.va.us/codecomm/register/regindex.htm)), pursuant to the Virginia Administrative Process Act ([www.townhall.state.va.us/dbbpages/dpb\\_apa.htm](http://www.townhall.state.va.us/dbbpages/dpb_apa.htm)), Executive Orders 21 (2002) and 58 (1999) ([www.governor.state.va.us/Press\\_Policy/Executive\\_Orders/EOHome.html](http://www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html)), and the *Virginia Register Form, Style and Procedure Manual* ([http://legis.state.va.us/codecomm/register/download/styl8\\_95.rtf](http://legis.state.va.us/codecomm/register/download/styl8_95.rtf)).

### 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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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. Do **not** state each provision or amendment or restate the purpose and intent of the regulation.*

The Board for Contractors (the Board) seeks to amend its current regulations to reflect and respond to statutory changes, clarify previous regulations and respond to changes in the industry. With the exception of a fee increase in January 2003, there has been no change to the regulations since November 2001.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

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Section 54.1-1102 of the Code of Virginia provides the authority for the Board for Contractors to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is determined at the discretion of the Board, 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. Detail 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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In order to protect the public from inexperienced, irresponsible or incompetent contractors, the Commonwealth initiated the licensing of those performing work in the construction industry in 1938. The purpose of amending these regulations is to 1) remove a licensing specialty that has been specifically exempted, by statute, of the requirement to hold a license; 2) clarify the scope of practice defined in various specialties to respond to changes in the industry; 3) correct a definition that was promulgated in 2001, that has led to confusion at numerous localities; 4) increase the reinstatement period in order to conform with the Tradesman licensing requirements; and 5) remove a fee from the regulations that is actually an administrative fee assigned by the Department of Professional and Occupational Regulation, not controlled by the Board for Contractors and, as such, should not be included in the regulations.

## Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)*

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The primary substantive changes to the definitions of the permitted scope of practice defined in 18 VAC 50-22-20 involve amending the definition of the Liquid Petroleum Gas (LPG) and Natural Gas Fitting (NGF) specialties in order to clarify that a contractor holding the Gas-Fitter (GFC) specialty is also permitted to perform that work and to remove the Alarm/Security systems specialty classification from the regulations as that practice is now statutorily exempt from licensure.

Other changes to the scope of practice descriptions were made as a result of changes in the industry involving boilers regulated by the Department of Labor & Industry and the licensing of firms involved in steel erection.

Additional changes involve the regulatory eligibility requirements for the Designated Employee of a licensee, amended to conform with those inferred in the statutes, the extension of the license reinstatement period from six months to one year, and the removal of an administrative fee charged by the Department of Professional and Occupational Regulation.

**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.*

In amending these regulations, the Board for Contractors is continuing to provide necessary public protection tasked to them through existing statutes. These proposed amendments will, without compromising that protection, clarify existing requirements, essentially allowing certain contractors to complete work they are qualified and trained to perform without the added burden of obtaining additional licenses or interpretations from the Board. Additionally, the extension of the reinstatement period from six months to one year will decrease the burden (both financial and administrative) of those contractors subject to that section of the regulations. Currently the Board’s staff spends a considerable amount of time processing applications and providing guidance to both the regulant population and the general public in those areas impacted by these proposed amendments. Promulgation of these changes will decrease the contact required with this regulants, which should have an increase in the amount of time staff can dedicate to application processing, subsequently reducing the current waiting time experienced by all applicants.

No disadvantages to the public, the agency, or the Commonwealth have been identified.

**Financial impact**

*Please identify the anticipated financial impact of the proposed regulation and at a minimum provide the following information:*

**Board for Contractors**

**Fiscal Impact of Proposed Regulation**

**Summary:**

The proposed regulations will remove Alarm Systems Contracting (ALS) from license specialties, in compliance with a change in statutory requirements. There were approximately 600 contractors with the ALS specialty, however approximately 500 of those have additional specialties and remain licensed. Approximately 100 contractors had only the ALS specialty, and their licenses were terminated as a result of the statutory change. About 25 obtained new licenses in a related area, resulting in a net loss of about 75 regulants to the board. Since this board licenses more than 83,000 businesses and individuals, the revenue loss associated with 75 licensees is immaterial.

The proposed regulations will also change the period of time a licensee may reinstate his license from six months to one year. No material fiscal impact is expected as a result of this change.

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.

These regulatory changes will not result in any need for adjustments to the board's fees.

**Fiscal Impact:**

	FY 2003	FY 2004	FY2005	FY2006
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Subprogram	560 44	560 44	560 44	560 44

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: There are no one-time costs associated with the proposed regulations.

Ongoing: There are no ongoing costs associated with the proposed regulations.

**Cost to Localities:** None anticipated.

**Description of Individuals, Businesses, or Other Entities Impacted:** Individuals licensed as contractors and tradesmen.

**Estimated Number of Regulants:** The Department currently regulates approximately 83,440 individuals and businesses.

**Projected Cost to Regulants:** No increase or decrease in costs to regulants is expected to result from these proposed regulations.

**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.*

In reviewing the regulations, the Board considered whether there was a less burdensome alternative. Alternatives that failed to meet this consideration were rejected. The Board believes that failure to adopt these regulations will actually place an unnecessary burden on both the existing regulant population and future applicants for licensure. Additionally, these regulations need to be revised in order to comply with statutory requirements and to clarify existing language.

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

**Public comment**

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

<b>Comment</b>	<b>Regulation Number</b>	<b>Commentor's Name and Affiliation</b>	<b>Board Response</b>
Supports addition of provision requiring a tradesman on a job site during	18 VAC 50-22-260(B)	James H. Underwood Business Manager Local Union 666, IBEW	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations

trade related installation.			during the public comment period to be held after the Board formally adopts proposed regulations.
Opposed to addition of provision requiring a tradesman on a job site during trade related installation.	18 VAC 50-22-260(B)	H.F. Sharp, II Sharp Maintenance and Refrigeration, Inc.	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.
Opposed to addition of provision requiring a tradesman on a job site during trade related installation.	18 VAC 50-22-260(B)	Richard Hibbard, Chairman/Mark Flanary, Vice Chairman Qualified Gas Contractors Association of the Virginia Peninsula	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.
Opposed to addition of provision requiring a tradesman on a job site during trade related installation.	18 VAC 50-22-260(B)	David P. Boggs, Chairman of the Qualified Gas Contractors Association of South Hampton Roads	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.
Opposed to addition of provision requiring a tradesman on a job site during trade related installation.	18 VAC 50-22-260(B)	John Rowland, President Weather Makers, Inc.	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.
Opposed to addition of provision requiring a tradesman on a job site during trade related installation. Would like to see more effort put	18 VAC 50-22-260(B)	George R. Fordyce, President Temperature Control Heating and Air Conditioning Corporation	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.

into enforcement of UL activity.			
Opposed to addition of provision requiring a tradesman on a job site during trade related installation.	18 VAC 50-22-260(B)	Anthony D. Shultz, President Virginia Chapter of the American Fire Sprinkler Association	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.
Opposed to addition of provision requiring a tradesman on a job site during trade related installation.	18 VAC 50-22-260(B)et seq.	John O. Rowland, President Kearney & Sons, Inc. Heating & Cooling	The Board will take this comment into consideration when drafting proposed regulations. You are encouraged to comment on those regulations during the public comment period to be held after the Board formally adopts proposed regulations.

**Impact on family**

*Please assess the impact of the proposed regulatory action on the institution of the family and family stability.*

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These proposed amendments are not anticipated to have any significant impact on Virginia's families.

**Detail of changes**

*Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.*

*If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

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18 VAC 50-22-20 is amended to add “Steel Erection” to the list of functions performed by Highway/heavy contractors.

18 VAC 50-22-30 is amended to:

Delete the definition of “alarm/security systems contractors” as required by the specific exemption of this work in § 54.1-1103(E) of the Code of Virginia.

Clarify the definition of “equipment/machinery contracting” to include boilers regulated by the Department of Labor and Industry. These boilers are exempt from the provisions of the Building Code and are not generally installed, maintained or repaired by plumbers or HVA tradesmen.

Amend the definition of “lead abatement contracting” to allow contractors holding the HVA classification to perform this work when incidental to work in that classification. This provision is already in place for those contractors holding the PLB classification.

Amend the definition of “liquefied petroleum gas contracting” to provide that contractors holding the GFC specialty may also perform this work. This provision was inadvertently left out of this definition when promulgated in 2001.

Amend the definition of “natural gas fitting provider contracting” to provide that contractors holding the GFC specialty may also perform this work. This provision was inadvertently left out of this definition when promulgated in 2001.

Remove “bricks” from the definition of work that does not have a specialty, but may fall under HIC, CIC, FIC or BLD. The implementation of the “masonry contracting” specialty negates the need for this provision.

18 VAC 50-22-50 B 2 & 18 VAC 50-22-60 B 2 are amended to remove “or is a member of responsible management of the firm as defined by this chapter.” This provision is in conflict with § 54.1-1106(B) and § 54.1-1108(B) which provide that a licensee may “engage in contracting only so long as the designated employee is in the full-time employment of the contractor.” There is no provision in the law that would allow for a designated employee to only be a member of responsible management.

18 VAC 50-22-100, 18 VAC 50-22-140, 18 VAC 50-22-170 and 18 VAC 50-22-250 are amended to remove the “Dishonored Check Fee” charge from the regulations. This is an administrative fee set by the Department of Professional and Occupational Regulation, not the Board for Contractors and, subsequently, should not be published as a part of the Board for Contractor Regulations.

18 VAC 50-22-170 is amended to extend the reinstatement period from six months to one year.

18 VAC 50-22-260 B 9 h is amended to remove the requirement that a contractor list the expiration date of his license on the contract. This requirement currently requires contractors who use printed contracts incur the expense of purchasing new forms every two years. This information, along with other pertinent licensing data, is already available from the DPOR website or through telephone confirmation with the licensing staff.