



Virginia
Regulatory
Town Hall

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Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Residential Building Energy Analysts – Firms
Action title	Board for Contractors – Residential Building Energy Analyst Firms
Date this document prepared	November 6, 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 for Contractors seeks to amend its regulations to include “Residential Building Energy Analyst Firm” among the types of licenses issued. The proposed amendments include the addition of a definition of Residential Building Analyst Firm, 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.

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 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 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 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.)

The Board seeks to amend its Regulations to include a definition and fee for "Residential Building Energy Analyst Firm" and to bring "Residential Building Energy Analyst Firm" license holders under the Board's jurisdiction and disciplinary authority.

18 VAC 20-22-10: General definitions were amended to add "Residential Building Energy Analyst Firm" among the definitions and list of licenses issued by the Board for Contractors.

18 VAC 50-22-62: Amending the regulations to include entry requirements for "Residential Building Energy Analyst Firm" license applicants.

18 VAC 50-22-100: Amending the regulations to include a "Residential Building Energy Analyst Firm License" fee of \$210. This amendment also indicates that a "Residential Building Energy Analyst Firm" is not subject to paying the \$25 recovery fund assessment.

18 VAC 50-22-130: Amending the regulations to add renewal requirements for “Residential Building Energy Analyst Firm.”

18 VAC 50-22-140: Amending the regulations to include a “Residential Building Energy Analyst Firm License” renewal fee of \$195.

18 VAC 50-22-160: Amending the regulations to add reinstatement requirements for “Residential Building Energy Analyst Firm.”

18 VAC 50-22-170: Amending the regulations to include a “Residential Building Energy Analyst Firm License” reinstatement fee of \$405.

18 VAC 50-22-180: Amending the regulations to include language that a “Residential Building Energy Analyst Firm” shall be continuously licensed if they meet the requirements of reinstatement.

18 VAC 50-22-260: The filing of charges and prohibited acts were updated to include “Residential Building Energy Analyst Firms” as well as contractors. This amendment also includes the addition of two prohibited acts specifically for “Residential Building Energy Analyst Firms.”

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 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 Analyst Firms 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 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.

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.

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

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

Summary:

The Board is adding a program to regulate residential building energy analysts. The proposed new regulations include the licensing requirements for firms performing residential building energy analysis. The program is required as a result of the Acts of the 2011 General Assembly.

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 firms wishing to perform or that currently perform residential building energy analyses (audits) will be affected by these amendments.

Estimated Number of Regulants: There are expected to be approximately 75 to 100 firms engaged in residential building energy analysis that will be required to be licensed.

Projected Cost to Regulants: The cost to Applicants for the firm Residential Building Energy Analyst License is \$210. Biennial Renewal Fees are \$195 for firms. Annual costs are \$97 for firms.

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 C Contractor Application	150	210
Class C Contractor Renewal	110	195

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 865 of the Acts of the 2011 General Assembly and the Code of Virginia mandate the promulgation of regulations to address residential building energy analyst licensure, residential building energy analyst firm licensure, approval of accredited training programs for residential building energy analysts, and standards for performing residential building energy analyses. The statutory addition of § 54.1-1144 defines “Licensed residential building energy analyst,” “Accredited building energy analyst training program,” and “Residential building energy analysis.” Additionally, statutory addition §54.1-1145 lists the eligibility criteria required to become a “licensed building energy analyst.” §54.1-1146 of the Code of Virginia states that the board for contractors must “establish procedures and requirements” to license residential building energy analysts, residential building energy analyst firms, approval of

accredited building energy analysts training programs, and standards of performing residential building energy analysis. The Board determined that certain regulations 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) There is currently no compliance or reporting requirement already in place as statutes enacted in 2011 are establishing a new program. As such, there is no benchmark to measure whether or not these regulations would be more or less stringent, except that, by nature of being a new program, the requirements would be more stringent than what is currently in place.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) These proposed regulations are new and have no deadlines or reporting requirements to simplify or consolidate.
- 4) There are no performance standards proposed by these regulations.
- 5) The overwhelming majority of businesses licensed as residential building energy analyst firms 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, as required by statute, which 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, establishing a new program, 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.

Commenter	Comment	Agency response
Lee O’Neal	The regulations do not specify the	The Board reviewed the two types of liability

	type of liability insurance. Would it be professional or general liability?	insurance and determined that they do want to specify a type of insurance and they chose general liability due to it covering injuries and accidents on the job site.
Dale Smith	The regulations have exemptions for certain types of licensed business, such as HVAC, architectural and engineering. Only newly formed businesses should be required to take the examination.	The exemptions from the requirements of holding a license are listed in the statutes and do not come under the authority of the Board.

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.

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

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 applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
18 VAC 50-22-10		none	Provides a definition of “residential building analyst firm.” While the statutes provide definitions of a licensed residential building analyst and a residential building energy analysis, there is no definition provided for a firm that provides such services, although the statutes require that these firms be

			licensed. This definition simply provides that if a business entity performs the analyses defined in the statute, then they are a residential building analyst firm.
18 VAC50- 22-100		Fees	The proposed change includes the cost of obtaining a “Residential Building Energy Analyst Firm” license. The cost is equal to the Class C Contractor License fee of \$210 and does not include a Recovery Fund assessment fee.
18 VAC50- 22-130		Qualifications for Renewal	The proposed change requires “Residential Building Energy Analyst Firms” to meet the qualifications of initial licensure upon renewal.
18 VAC50- 22-140		Renewal Fees	The proposed change includes the renewal fee for the “Residential Building Energy Analyst Firm.”
18 VAC50- 22-160		Reinstatement required	The proposed change requires “Residential Building Energy Analyst Firms” to meet the qualifications of initial licensure upon reinstatement.
18 VAC50- 22-170		Reinstatement Fees	The proposed changes include the reinstatement fee for the “Residential Building Energy Analyst Firm.”
18 VAC50- 22-180		Status of licensee during the period of Reinstatement	The proposed change places the “Residential Building Energy Analyst Firm” under the jurisdiction of the board during this time period. This provision of the regulations provides protection to consumers who employ licensees during a reinstatement period and gives the Board regulatory authority over the licensee for activities during this period. An identical provision is in place for firms holding a contractor license.
18 VAC50- 22-260		Prohibited Acts	<p>The proposed changes add residential building energy analyst firms to the section. In two instances (18 VAC 50-22-260 B 5 & 6) the language is amended to include these firms in acts that include negligence, incompetence and misconduct.</p> <p>Two new prohibited acts are added that are specific to residential building energy analyst firms for failure to ensure employees are conducting analyses 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 prohibited act makes it a violation not to maintain required general liability insurance at any time during licensure.</p>

If a new regulation is being promulgated, use this chart:

Section number	Proposed requirements	Other regulations and law that apply	Intent and likely impact of proposed requirements
18VAC50-22-65	Requirements for Residential Building Energy Analyst Firms		<p>This newly proposed section outlines the eligibility criteria for licensure as a residential building analyst firm. To keep the requirements as simple as possible, nomenclature used in the licensing of contractors was used, as applicable; to identify specific individuals affiliated with the license, including the qualified individual (in this case one holding the individual license issued in 18 VAC 50-30) and the members of responsible management.</p> <p>Language requiring information including past & current licensure, financial status (required by § 54.1-1145 B 5), and past criminal history, were also taken from provisions in the licensing of contractors and adapted for use with this program.</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 \$500,000 of liability insurance. The Energy Star program, while not requiring insurance for those individuals who certify homes for Federal Tax incentives, does suggest</p>

			<p>that businesses have liability insurance in place. 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, 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 \$500,000 minimum insurance requirement for residential building energy analyst firms would provide adequate coverage and not be overly burdensome on the licensee. Additionally, after reviewing types of insurance, the Board determined that general liability would provide the most protection to the public.</p>
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