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## Final Regulation Agency Background Document

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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

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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.*

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The Board for Contractors adopted the amended regulations to include “Residential Building Energy Analyst Firm” licenses to the Board for Contractors 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.*

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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.*

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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.*

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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 there are no disadvantages to the public or the Commonwealth, please indicate.*

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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 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.*

No public comments were received for these proposed regulations.

**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
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 &amp; 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>