



## Proposed Regulation Agency Background Document

<b>Agency name</b>	Board for Contractors
<b>Virginia Administrative Code (VAC) citation</b>	18 VAC 30 -22
<b>Regulation title</b>	Board for Contractors Regulations
<b>Action title</b>	Amend
<b>Document preparation date</b>	June 17, 2004

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.*

The Board for Contractors (the Board) seeks to amend its current regulations to reflect and respond to statutory changes, clarify current 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.

These proposed regulations amend sections of the regulations regarding security alarm contractors and designated employees to bring the regulations into agreement with the statutes. Amendments are proposed to the scope of practice permitted by a number of specialties in order to clarify the type of work that may be performed by those holding that specific classification on their license. These changes were made as a result of questions that have been presented to the Board on a day-to-day basis by licensees, Building Officials and the general public.

Additionally, the board has added a definition of supervisor and supervision to the regulations in conjunction with the addition of a prohibited act that addresses the issue of ensuring that the trade-related work performed on a job is completed by a licensed tradesman or under the supervision of a licensed tradesman.

## Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), 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 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 and the problems the proposal is intended to solve.*

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The purpose of amending these regulations is to 1) remove the definition of the alarm/security systems contracting specialty that has been specifically exempted, by statute, of the requirement to hold a contractor license; 2) amend the definition of highway/heavy contractor to include the function of steel erection, in response to changes in the industry; 3) amend the definition of equipment/machinery contracting to include boilers regulated by the Department of Labor and Industry that would not come under the expertise of contractors holding a license with the HVAC specialty; 4) remove “bricks” from the list of activities that do not have their own specialty, as the masonry specialty was added to the regulations with the 1999 amendments; 5) correct the definitions of liquefied petroleum gas contracting and natural gas fitting provider contracting that were promulgated in 2001 that, as currently written, have led to confusion at numerous localities to the scope of practice permitted licensees holding the gas fitting contractor specialty; 6) add the definitions of helper/laborer, supervisor and supervision to the definitions in conjunction with the addition of a provision that requires that a licensed contractor ensure that he provide for a licensed tradesman to be responsible for trade-related work being performed; 7) increase the reinstatement period in order to conform with the Tradesman licensing requirements; 8) amend the requirement that a Designated Employee be either a full-time employee or a member of responsible management to bring it into agreement with the statutory requirement that the Designated Employee must be a full-time employee; and 9) remove the returned check fee from the regulations, which 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.

The amendments to the definitions will serve multiple purposes related to the health, safety and welfare of the public. First, the General Assembly determined that the most prudent and efficient way to protect consumers who utilize the services of electronic security alarm

contractors was to house the program exclusively at the Department of Criminal Justice Services, hence the removal of the program from under the authority of the Board for Contractors. Other amendments to the definitions protect the public by making sure the regulations are clear in the definition of the scope of practice allowed for each specialty classification, ensuring that only those contractors who are qualified, complete specific contracting work.

Originally, proposed regulations were submitted for Executive Branch Review in August of 2003, however, during that review period, the Board for Contractors reconsidered the public comment received during the NOIRA comment period. That reconsideration resulted in the addition of the definitions and requirements described in number four.

## Substance

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

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.

As a result of public comment received during the NOIRA comment period a substantive change is being proposed jointly to the definitions and the prohibited acts. This change adds the definition of helpers/laborers, supervision and supervisor and, in conjunction with the proposed change to the prohibited acts, requiring supervision of helpers and laborers assisting licensed tradesmen.

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

1) 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 providing an advantage to certain contractors by allowing them to complete work they are qualified to complete and trained to perform, without the added burden of obtaining additional licenses or interpretations from the Board. Further protection will be afforded the public by ensuring that trade-related work, completed by non-licensed tradesman, be periodically inspected by licensed tradesman to ensure that the work is performed properly and to the standards required by the trade and other applicable statutes, regulations and standards. 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.

2) The amendment of these regulations will be advantageous to the Agency by decreasing the contact required with the regulant population to provide technical assistance and to process applications for licensure or amendments to existing licenses. This will increase the amount of time staff can dedicate to application processing, subsequently reducing the current waiting time experienced by all applicants. 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.

3) The amendment of the definitions in these proposed regulations will provide needed clarification to the Building Officials of the various localities throughout the Commonwealth, who are tasked with issuing permits to those contractors who are appropriately licensed. Permitting staff at localities utilize the definitions of the scope of practice to determine if the work being listed on the application for a building permit falls into the classification or specialty shown on the license of the contractor applying for the permit.

There are no disadvantages to the public or the Commonwealth anticipated by the promulgation of these regulations.

**Economic impact**

*Please identify the anticipated economic impact of the proposed regulation.*

**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.

## 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.*

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In reviewing the regulations, the Board considered whether there were less burdensome alternatives. No such alternatives were identified.

The proposed regulations involving the removal of the alarm/security systems contractor definition and the amending of the Designated Employee requirements are in reaction to the statutes that govern the administration of contractor licensing. Subsequently, the consideration of an alternative was not undertaken.

Other proposed changes to the definitions were the result of discussions regarding alternatives to regulations currently in place. The Board believes that failure to adopt these amendments will actually place an unnecessary burden on both the existing regulant population and future applicants for licensure.

In consideration of the supervision requirement for individuals performing trade-related work, the Board was faced with weighing the burden on the regulant against the protection of the public. The licensing of tradesman was moved to the regulatory authority of the Board for Contractors in 1995, but was in existence, through the Department of Housing and Community Development or individual localities for decades previous to that transfer. There is no question that the implied intent is to ensure that trade-related work is done by individuals who, through experience, education and examination, has demonstrated a level of competency that provides a certain level of protection to the citizens of the Commonwealth. In determining the level of regulation proposed in these regulations the Board considered the requirement that all work be completed by a licensed tradesman, which would be a considerable burden to the regulant and, due to increase costs, to the public versus allowing a non-licensed individual to complete trade-related work as an employee of a firm holding a contractor license with a trade-related classification. This alternative, the least burdensome to the regulant would provide no protection to the public. The Board, after considering public comment received during the NOIRA comment period, as well as comment received at their regular meetings, determined that a compromise was appropriate that would be of a minimum burden to the licensee while affording an adequate level of protection to the consumer. This “best alternative” is reflected in these proposed regulations through the development of the definitions of supervisor and supervision along with the addition of a standard of practice that would require a degree of supervision of non-licensed individuals.

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

**Public comment**

*Please summarize all comments received during 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 trade related installation.	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 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	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

job site during 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)	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 into enforcement of UL activity.	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.
Opposed to addition of provision requiring a tradesman on a job site during trade related	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

installation.			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.

**Family impact**

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

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.*

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
18 VAC 50-22-10		a) "Helper" & "laborer" not defined  b) "Supervision" not defined.	a) Adds the definition of "helper" & "laborer" to the regulations in order to help clarify the responsibility of "supervision" also added.  b) Adds the definition of "supervision" to the regulations in order to provide the basis for the determination of whether or not trade-related work completed by an individual, who is not



		c) "Supervisor" not defined.	<p>licensed as a tradesman, has been adequately reviewed by someone who is appropriately licensed and trained. This adds a level of protection to work that is currently not provided in the regulations, but was the intent of the Tradesman Program from its inception (see the definition of supervisor in 18 VAC 50-30-10).</p> <p>c) Adds the definition of "supervisor" to the regulations in order to provide the basis for the determination of who can provide "supervision" as defined in these proposed regulations.</p>
18 VAC 50-22-20		"Steel Erection" falls under the definition of "Building."	<p>Add "Steel Erection" to the list of functions performed by Highway/heavy contractors. While not unknown in the residential construction arena, steel erection is, by far, used in commercial construction. Many firms that perform this work are not qualified, nor do they desire, to build houses, they only want to do steel erection. During the building boom of the last decade, a number of these firms wanted to be licensed in order to do steel frame work for commercial and industrial projects in the Commonwealth of Virginia. In order to get a license with the "Building" classification the "Designated Employee" of the firm was required to sit for an examination that, in part, consisted of a technical construction section, that addressed all aspects of the Virginia Uniform Statewide Building Code as it pertained to the construction of buildings, with an emphasis on residential construction. The scope of the work performed by steel erector firms is so limited that it was extremely cumbersome to find an individual with the knowledge to successfully complete the examination. The Board, sensitive to this, issued a policy that would allow for those firms that complete steel erection work, be permitted to complete such work with the "Highway/Heavy" classification on their licenses. This proposed change will bring this policy into the regulations.</p>
18 VAC 50-22-30		<p>a) provides for the ALS specialty</p> <p>b) amends the definition of "equipment/machinery" contracting</p> <p>c) amends the definition of "lead abatement contracting"</p> <p>d) amends the definition of "liquefied petroleum gas contracting"</p>	<p>a) 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.</p> <p>b) 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.</p> <p>c) 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 plumbing classification.</p> <p>d) 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.</p>

		<p>e) amends the definition of “natural gas fitting provider contracting”</p> <p>f) removes the word “brick” from work that has no specialty definition</p>	<p>e) 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.</p> <p>f) 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.</p>
18 VAC 50-22-50 (B)(2)		Current regulations allow a Designated Employee of a Class B license to be either a member of Responsible Management <u>or</u> a full-time employee.	This proposed amendment removes “Responsible Management” from one of the optional qualifications of the Designated Employee of a Class B license. The current provision is in conflict with § 54.1-1108(B) which provides 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 50-22-60 (B)(2)		Current regulations allow a Designated Employee of a Class A license to be either a member of Responsible Management <u>or</u> a full-time employee.	This proposed amendment removes “Responsible Management” from one of the optional qualifications of the Designated Employee of a Class A license. The current provision is in conflict with § 54.1-1106 which provides 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		Current regulations list a “Dishonored Check Fee.”	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 50-22-140		Current regulations list a “Dishonored Check Fee.”	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		<p>a) current regulations list a “Dishonored Check Fee.”</p> <p>b) reinstatement must be made within six months of expiration of licensure</p>	<p>a) 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.</p> <p>b) Reinstatement period amended to one year from date of expiration. This change was made to bring the Contractor and Tradesman Regulations into compliance. The reinstatement period provides a method to bring a license into compliance after the expiration period, while providing an increased level of protection to citizens.</p> <p>The Board has determined that, under normal circumstances, a</p>

			<p>contractor would not lose his competency to adequately perform work or knowledge of his specialty within a year after the expiration of a license. The vast majority of licenses that are currently reinstated by the Board, fell into the category of reinstatement for clerical reasons (i.e., address change of the business, bookkeeping errors, failure to keep-up with multiple licenses/permits) and not for reasons that are related to the ability to perform work that is done safely and to the satisfaction of the applicable building codes.</p> <p>The regulations, in 18 VAC 50-22-180, provide that a contractor who reinstates shall be regarded as having been continuously licensed without interruption. This is of tantamount importance to consumers who seek the protection of the Contractor Transaction Recovery Fund. Additionally, the continuity of licensure without interruption, ensures that the Board has disciplinary authority over the licensee, another aspect of public protection that must be considered.</p>
18 VAC 50-22-250		Current regulations list a “Dishonored Check Fee.”	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 50-22-260 (B) (9)(h)		The expiration date of the contractor’s license is required to be on the contract.	Amended to remove the requirement that the expiration date be included on the contract. A number of contractors purchase contracts already printed with the majority of the information that is required by regulation to be included. For small contractors, it can be expensive to be required to have the contracts reprinted every two years. This information, along with other pertinent licensing data, including extensive complaint information, is already available from the DPOR website or though telephone confirmation with the licensing staff. Subsequently, the Board believes that by removing this requirement there will be a decrease in the burden placed on the current regulant population with no decrease in the protection provided the citizens.
18 VAC 50-22-260 (B)	18 VAC 50-22-260 (B)(32)		<p>This amendment to the prohibited act would give the Board the authority to discipline contractors who perform plumbing, electrical, or HVAC related work with employees that are not licensed as tradesman, without ensuring that someone who is licensed, and thus has demonstrated a level of competence in the appropriate trades, is supervising these employees as defined in 18 VAC 50-22-10.</p> <p>All contractors licenses with trade-related classifications are required by the regulations (18 VAC 50-22-40, 18 VAC 50-22-50 &amp; 18 VAC 50-22-60) to have a Qualified Individual who holds a valid master license in the appropriate classification. There is no prohibition in place that prevents a licensee from having more than one licensed tradesman and there are a large number of licensees that employ more than one master or journeyman tradesman.</p> <p>Under the current regulations there is no specific provision that puts the responsibility of adequate supervision on the</p>

			<p>contractor. This amendment would specifically ensure that trade-related work is performed under the supervision of a licensed tradesman. This will provide a level of protection that is not currently in place by ensuring that trade-related work, completed by non-licensed tradesman, be periodically inspected by licensed tradesman to ensure that the work is performed properly and to the standards required by the trade and other applicable statutes, regulations and standards.</p>
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