

APA-1  
Revised 4/2018

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control \_\_\_\_\_ Department or Agency: Alabama Board of Heating, Air Conditioning & Refrigeration Contractors  
Rule No. 440-X-2  
Rule Title: Organization and Administrative Procedures of the Board

\_\_\_\_\_ New  X  Amend \_\_\_\_\_ Repeal \_\_\_\_\_ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?  YES

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?  YES

Is there another, less restrictive method of regulation available that could adequately protect the public?  NO

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?  NO

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?  NO

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?  YES

Does the proposed action relate to or affect in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule?  NO

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Does the proposed rule have an economic impact?  NO

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

\*\*\*\*\*

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Services Agency.

Signature of certifying officer     
Date: September 15, 2022 (DATE FILED)

REC'D & FILED  
(STAMP)  
SEP 15 2022

APA-2

Board of Heating, Air Conditioning & Refrigeration Contractors

NOTICE OF INTENDED ACTION

AGENCY NAME:

Board of Heating, Air Conditioning & Refrigeration Contractors

RULE NO. & TITLE: 440-X-1-.02 ORGANIZATION AND ADMINISTRATIVE PROCEDURES OF THE BOARD

INTENDED ACTION:

Amend with Current Information

SUBSTANCE OF PROPOSED ACTION:

To clarify the duties of the Secretary.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

11:00 A.M., November 16, 2022 100 N. Union Street, Ste. 986, Montgomery, AL 36104.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Written comment will be accepted until 5:00 P.M., Tuesday, November 15 2022. All comments will be read before the Board on Wednesday, November 16, 2022.

CONTACT PERSON AT AGENCY:

  
Jeffrey M. Bennett  
Executive Director

CHAPTER 440-X-2  
ORGANIZATION AND ADMINISTRATIVE PROCEDURES OF THE BOARD

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440-X-2-.01     **Purpose**. The Alabama Board of Heating, Air Conditioning Refrigeration Contractors was created to certify qualified contractors on a state-wide basis in order to protect the public by identifying those contractors who have the knowledge and ability to install, service, or repair heating, air conditioning or refrigeration systems.

**Authors:** Mark Montiel, Kathy LeCroix

**Statutory Authority:** Code of Ala. 1975, §34-31-19.

**History:** Filed July 17, 1985.   **Amended:** Filed July 12, 1988.

**Repealed and New Rule:** Filed April 9, 2003; effective May 14, 2003.   **Amended:** Filed August 14, 2009; effective September 18, 2009.

440-X-2-.02     **Officers**. The Board annually shall elect from its members a chairman, vice-chairman, and a secretary. The chairman shall preside over meetings of the Board when present and shall appoint all committees of the Board. The vice-chairman shall preside over meetings of the Board in the absence of the chairman. The chairman shall designate another member to preside at meetings from which both the chairman and vice-chairman are absent. ~~The secretary of the~~ The secretary or, if directed by the board, the executive director shall perform the following tasks: keep all minutes, books, records, and files of the Board; shall issue all certificates in the name of the Board; shall send all notices and attend to all correspondence directed by the Board; shall receive and deposit fees; and shall perform all incidental duties of the

office as directed by the Board. The secretary shall give bond, payable to the Governor, in the penal sum of Five Thousand Dollars (\$5,000.00) for the faithful performance of his duties, and the premium thereof shall be paid from the fees of the Board. No moneys shall be withdrawn from the funds of the Board except by direction of the Board as provided in state law.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-21.

**History:** Filed September 30, 1982. **Amended:** Filed July 12, 1988; February 21, 1991. **Repealed and New Rule:** Filed April 9, 2003; effective May 14, 2003.

**440-X-2-.03** **Executive Director**. The Board may select and hire an executive director to serve at the pleasure of the Board. The executive director shall be responsible for the administration of Board policies. The executive director shall perform duties assigned by the Board and shall perform the duties of the secretary of the Board if directed by the Board. The executive director shall also fulfill the duties assigned to the executive director or executive secretary as described in the Alabama Administrative Procedure Act. The executive director shall be designated as the agent for the Board for service of legal process upon the Board. The executive director shall have custody of and shall safeguard and keep in good order all property and records of the Board. The executive director shall sign all instruments and matters that require approval of the Board. The executive director shall receive and deposit all funds to the credit of the board in the State Treasury and shall review all bills before requesting the State Comptroller to make payment of any accounts. The executive director shall keep the records of the Board which shall include, without limitation, all applications for certification by the Board and supporting documentation; a complete and permanent record of all applications that fail to result in certification; evidence of the important business transactions of the Board; a complete and permanent record of all certifications issued by the Board; and a record of all enforcement and disciplinary actions taken by the Board. All correspondence to the Board, including requests for information and the submission of requests, shall be made to the executive director at the Board's office in Montgomery, Alabama.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-21(a).

**History:** Filed January 6, 1988. **Amended:** Filed July 12, 1988. **Repealed and New Rule:** Filed April 9, 2003; effective May 14, 2003.

**Ed. Note:** Formerly Rule No. 440-X-2-.06. **Amended:** Filed February 21, 1991; December 11, 1991; July 17, 1992.

**440-X-2-.04 Deputy Directory And Other Staff.**

(1) The Executive Director with the consent of the Board may also employ a deputy director who shall serve at the pleasure of the Board Executive Director. The salary and compensation of the deputy director shall be set by the Board and shall not exceed the salary set for the executive director.

(2) The Board may also employ other full time or part time administrative staff who shall work under the direction and supervision of the executive director.

(3) All Board staff, including the executive director and deputy director, shall be entitled to reimbursement for travel the same as other employees of the State of Alabama, including actual expenses for authorized out-of-state travel, and per diem and transportation costs for in-state travel.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-21(a).

**History:** Filed October 3, 1991. **Amended:** Filed November 5, 1996; effective December 10, 1996. **Repealed and New Rule:** Filed April 9, 2003; effective May 14, 2003.

**440-X-2-.05 Meetings.**

(1) The Board shall conduct regular meetings to perform its lawful duties at least once in each three-month period.

(2) The Board may meet on other occasions as necessary to conduct its business and to comply with state law and the Rules and Regulations of the Board. Special meetings of the Board may be called by the chairman or by a majority of the members of the Board.

(3) Each member of the Board shall be given at least ten days notice of the time, place, and purpose of any regular meeting. This notice may be waived by the individual member and is waived by the member's presence at the called meeting. Each member of the Board shall receive reasonable notice for all called special meetings. The executive director shall provide reasonable notice to the public of all regular and special meetings of the Board as appropriate under the circumstances.

(4) A majority of the Board shall constitute a quorum for the transaction of all business.

(5) The Board may meet at its Board offices in Montgomery, Alabama or such other location as designated to conduct the business of the Board.

(6) Each member of the Board shall receive One Hundred Dollars (\$100.00) per day for attending sessions of the Board or its committees and, in addition, shall be reimbursed for such necessary travel as are paid to state employees, to be paid from fees collected by the Board.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-21, 34-31-23.

**History:** Filed July 17, 1992. **Repealed and New Rule:** Filed April 9, 2003; effective May 14, 2003.

**440-X-2-.06** **Voting.** All Board members, including the chairman, are entitled to make or second motions. A majority of those members of the Board present and voting on any matter shall decide the matter before the Board. The chairman and other officers of the Board shall be allowed to vote on matters the same as other members of the Board. Votes of the Board shall be included in the minutes of the Board and kept as part of the permanent records of the Board.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-21.

**History:** **New Rule:** Filed April 9, 2003; effective May 14, 2003.

**440-X-2-.07** **List Of Certified Contractors.** The Board may publish annually a list of names and addresses of all individuals certified by the Board. The Board may also publish the list of certified contractors on the Board's designated website. The Board may provide, upon request to the Board, a copy of said list to persons and may require a reasonable fee to cover the costs of producing and mailing said directory.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-31.

**History:** **New Rule:** Filed April 9, 2003; effective May 14, 2003.

**440-X-2-.08** **Advisory Opinions.** The Board may, in its discretion, issue an advisory opinion to any certified

contractor, governmental official, or entity substantially affected by a Rule or statute enforceable by the Board. Board advisory opinions may address the applicability of such Rules or statutes and other matters to assist the certified contractor, government official, or entity with the meaning and scope of the orders of the board and the Rules and Regulations of the Board. All requests for advisory opinions must be in writing and must specifically state that it is a "request for an advisory opinion". The Board's general counsel shall assist the Board as necessary in responding to these requests for advisory opinions.

**Author:** Mark Montiel

**Statutory Authority:** Code of Ala. 1975, §34-31-33.

**History: New Rule:** Filed April 9, 2003; effective May 14, 2003.

**Ed. Note: Previous rules:**

**440-X-2-.03** Annual Renewal Of Certified Contractors: Filed September 30, 1982. **Amended:** Filed September 21, 1987. **Repealed:** Filed July 12, 1988.

**440-X-2-.04** Application For Registered Contractor: Filed September 30, 1982. **Repealed:** Filed July 12, 1988.

**440-X-2-.05** Information Verification: Filed September 30, 1982. **Amended:** Filed September 21, 1987. **Repealed:** Filed July 12, 1988.