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Final Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation(s)	18 VAC 50-22
Regulation title(s)	Board for Contractors Regulations
Action title	Addition of Miscellaneous Specialty
Date this document prepared	March 8, 2019

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1 VAC7-10), and the *Virginia Register Form, Style, and Procedure Manual for Publication of Virginia Regulations*.

Brief Summary

Please provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

The proposed regulations will add a license specialty to the list of those already offered to applicants seeking a contractor license and to those currently licensed contractors wanting to add a specialty to their existing license. This proposed specialty would be used in those instances where the work being performed by the contractor is restricted to a single activity and that activity is more limited than the functions provided by the any other specialty offered by the Board.

Any person applying for this specialty will be required to have that application reviewed by the Board for Contractors. This review would require an administrative proceeding outlined in Va. Code § 2.2-4019 and procedures currently in place to review other applications considered to be non-routine.

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 or definitions that are not otherwise defined in this document or the regulations.

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.

The Board for Contractors adopted these amendments to the Board for Contractors Regulations (18 VAC 50-22) as final at its meeting on March 5, 2019.

Mandate and Impetus

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously-reported information, include a specific statement to that effect.

As previously reported on the Agency Background Document submitted for the proposed stage, the Board for Contractors initiated these amendments in order to decrease regulatory burden and offer qualified contractor applicants more opportunities to enter the profession, pursuant to the policies and principles enumerated in E.O. 14 (2018).

Legal Basis

Please identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

Va. Code § 54.1-1102 of the Code of Virginia provides the authority for the Board to promulgate regulations for the licensure of contractors in the Commonwealth. The content of the regulations is pursuant to the Board's discretion, but shall not be in conflict with the purposes of the statutory authority.

Purpose

Please explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

The regulatory change is needed because the miscellaneous specialty will allow applicants who perform work that is too specialized to fall under an existing category to qualify for a contractor license for just that one particular area. Applicants still would be required to provide sufficient documentation demonstrating minimum competency to perform the work in that specialized area. This will ensure the least restrictive regulatory environment necessary while still protecting the public's health, safety, and welfare.

On December 1, 2012, the Board for Contractors promulgated regulations that require Qualified Individuals complete a technical examination in their related specialty as one of the eligibility criteria for approval of the application for licensure. On March 1, 2016, the Board for Contractors promulgated regulations that expanded the number of specialties available to applicants for licensure.

Comment received by the Board since the 2012 examination requirement and the 2016 specialty examination amendment, as well as a review of examination statistics, has indicated that many contractors are performing work that is specialized to the point of not meeting any one existing specialty. As a result, the Qualified Individual finds it difficult to meet the examination requirements and obtain licensure because the material covered in the technical examination is too broad for the applicant's specialized expertise.

The miscellaneous specialty will allow an applicant for licensure that demonstrates to the Board for Contractors that the work performed is too specialized to be categorized in an existing specialty to obtain a license just for that one particular area. Currently, a number of these applicants are unable to pass the technical examination and are not able to become licensed. The miscellaneous specialty will allow these applicants to become licensed and engage in business within the Commonwealth.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

Section 18 VAC 50-22-30 – Definitions of specialty services: The Board will add the miscellaneous specialty and will develop a definition that will allow eligible contractors to perform work in a narrow and defined scope that may not be covered by any of the other specialties.

Issues

Please identify the issues associated with the regulatory change, 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, include a specific statement to that effect.

These proposed regulations would allow contractors that perform a single restrictive task to apply for the miscellaneous specialty, which permit the license holder to perform only that one task. It would be advantageous to the public as it would allow these companies to become licensed, and would not make it overly burdensome on the company to become licensed.

- 1) Current regulations provide more than 50 different classifications/specialties available to licensed contractors (e.g., residential building, roofing, plumbing, swimming pool construction, painting, etc.) Since 2012, the Qualified Individual for license specialties that do not require an individual license (e.g. trade-related specialties, elevator/escalator, water well systems, etc.) must successfully complete a technical examination based on the work permitted under the scope of practice for each specialty as outlined in 18 VAC 50-22-20 and 18 VAC 50-22-30.

There have been some instances, however, where the contractor is performing a solitary activity that, while it falls under a specialty listed in the regulations, is specialized to the point of being a single restricted activity. For example, in 2014 a contractor applied for a license to install curtains

as a subcontractor for a project involving the historical renovation of a theatre. The company only installs theatre curtains, and was licensed to do so in another state. Because Virginia does not offer a specialty restricted only to theatre curtain installation, the contractor was forced to apply for the “multipurpose” commercial improvement contracting (CIC) specialty. The Qualified Individual was tested on framing, drywall, finish carpentry, painting, commercial build outs, and other work that would fall under the CIC specialty, but nothing regarding theatre curtains. The applicant took the examination multiple times before being able to pass, primarily because the exam did not cover the type of work that the company performed.

These regulatory changes would allow contractors that perform a single restrictive task to apply for the miscellaneous specialty, which permit the license holder to perform only that one task. The primary advantage of a miscellaneous specialty for contractors is its decreased regulatory burden, while benefiting consumers by allowing these companies to become licensed while still ensuring minimum competency that protects public health, safety and welfare. There are no anticipated disadvantages to the public.

- 2) There are no disadvantages presented by these regulations to the Board, the Department of Professional and Occupational Regulation, or the Commonwealth. The advantages would include a less burdensome path for niche contractors to obtain licensure, while projecting a more business friendly approach to licensure.
- 3) There are no other pertinent matters of interest to the regulated community, government officials, or the public, regarding these regulatory changes.

Requirements More Restrictive than Federal

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously-reported information, include a specific statement to that effect.

There are no requirements in these proposed regulations that are more restrictive than any current federal requirements.

Agencies, Localities, and Other Entities Particularly Affected

Please list all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously-reported information, include a specific statement to that effect.

Other State Agencies Particularly Affected

N/A

Localities Particularly Affected

N/A

Other Entities Particularly Affected

N/A

Public Comment

Please summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Ensure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.

There were no public comments received during the proposed stage.

Detail of Changes Made Since the Previous Stage

*Please list all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

There have been no changes to the regulations since the previous stage.

Detail of All Changes Proposed in this Regulatory Action

*Please list all changes proposed in this action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. * Please put an asterisk next to any substantive changes.*

Current section number	New chapter-section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of updated requirements
18 VAC 50-22-30		This section lists definitions of each individual specialty available to contractors in all license classes (A, B, and C). It is used to define the scope of practice allowed each individual specialty.	<p>The proposed change adds the miscellaneous specialty to those already issued by the Board for Contractors. The definition provides that it is for those instances where the work being done may fall under another specialty, but is so specialized as to be limited to a single activity.</p> <p>It would allow the licensee holding the miscellaneous specialty to only perform that limited activity. It can also not be used for work that would fall under those specialties that have an associated individual license or certification. This would include electrical, HVAC, plumbing, gas-fitting, liquefied petroleum gas-fitting, natural gas-fitting, elevator/escalator, water well systems, accessibility services, lead abatement, and asbestos abatement.</p>

			<p>Work within those specialties would require that particular specialty and would not fall under the miscellaneous specialty.</p> <p>In December 2012, the Board for Contractors promulgated regulations that required all Qualified Individuals to demonstrate a basic knowledge of the specialty in which they would be serving as the qualifier. For most specialties, this meant a technical examination.</p> <p>Since 2012, the Board has received a number of requests from contractors that were performing work that, while it would fall under one of the specialties currently in place, would be so specialized, as it would not be part of the technical examination making it extremely difficult for that individual to pass the technical examination. The alternative is for the contractor to hire an employee with experience outside their limited scope of work, in order for them to pass the examination, to have their Qualified Individual repeat the exam until it is passed, or to withdraw their application for consideration. The Board determined that, in these limited circumstances, the current requirements may be overly burdensome.</p> <p>The addition of the miscellaneous specialty would be to allow a new applicant or existing licensee, the opportunity to apply for a limited specialty that would allow them to perform the work in which they are specialized, without having to meet the criteria for the more encompassing specialty. This determination would be made by the Board for Contractors.</p>
<p>18 VAC 50-22-40 B 4</p>		<p>Currently lists technical requirements for the Qualified Individual of Class C licenses.</p>	<p>Adds the miscellaneous specialty to the list and provides that the Qualified Individual has been approved by the Board for Contractors for the specialty.</p> <p>All other specialties have either a companion license/certification requirement for the Qualified Individual, such as a master tradesman license; a license from another regulatory board, such as the onsite sewage disposal system installers or lead abatement contractors; or an independent</p>

			<p>certification, such as the NICET certification for fire sprinkler contractors. The miscellaneous specialty would not have any such requirements as it would be limited to a specific activity and it would be impossible to predict what all of those activities could be.</p> <p>Applicants for the miscellaneous specialty will have their applications reviewed by the Board to determine the eligibility and to identify the activity that would appear on the license.</p>
18 VAC 50-22-50 B 4		Currently lists technical requirements for the Qualified Individual of Class B licenses.	<p>Adds the miscellaneous specialty to the list and provides that the Qualified Individual has been approved by the Board for Contractors for the specialty.</p> <p>All other specialties have either a companion license/certification requirement for the Qualified Individual, such as a master tradesman license; a license from another regulatory board, such as the onsite sewage disposal system installers or lead abatement contractors; or an independent certification, such as the NICET certification for fire sprinkler contractors. The miscellaneous specialty would not have any such requirements as it would be limited to a specific activity and it would be impossible to predict what all of those activities could be.</p> <p>Applicants for the miscellaneous specialty will have their applications reviewed by the Board to determine the eligibility and to identify the activity that would appear on the license.</p>
18 VAC 50-22-60 B 4		Currently lists technical requirements for the Qualified Individual of Class A licenses.	<p>Adds the miscellaneous specialty to the list and provides that the Qualified Individual has been approved by the Board for Contractors for the specialty.</p> <p>All other specialties have either a companion license/certification requirement for the Qualified Individual, such as a master tradesman license; a license from another regulatory board, such as the onsite sewage disposal system installers or lead abatement contractors; or an independent certification, such as the NICET certification for fire sprinkler contractors. The miscellaneous specialty would not</p>

			<p>have any such requirements as it would be limited to a specific activity and it would be impossible to predict what all of those activities could be.</p> <p>Applicants for the miscellaneous specialty will have their applications reviewed by the Board to determine the eligibility and to identify the activity that would appear on the license.</p>
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