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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 remediation specialty
Date this document prepared	August 24, 2017

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 is amending its regulations to add a specialty for those businesses that perform, manage, or supervise the remediation of property that was formerly used to manufacture methamphetamine. This specialty will be exclusive, in that no other specialty would be permitted to perform such remediation. Eligibility criteria for the specialty will be essentially the same as other specialties, to include experience and examination requirements for the Qualified Individual.

Also included in the final regulations is a prohibited act to require that work performed by these contractors conform to the remediation standards set forth by other identified agencies in the Commonwealth charged with overseeing such activity.

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 used in this document that are not also defined in 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 as final at its meeting on August 8, 2017.

Legal basis

Please identify the (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should 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's overall regulatory authority.

Section 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.

This particular final regulation is the result of Chapter 527 of the 2016 Acts of Assembly, which expanded the statutory definition of contractor in § 54.1-1100 to encompass remediation work done in accordance with state guidelines for clean-up of residential property formerly used to manufacture methamphetamine. (The Department of Health establishes such guidelines pursuant to § 32.1-11.7 of the Code of Virginia).

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.

During the 2016 Session, the General Assembly amended the definition of "contractor" found in § 54.1-1100 of the Code of Virginia to include remediation of residential property formerly used to manufacture methamphetamine. As a result of the legislative action, the Board for Contractors must expand its current list of available specialties to provide for remediation activities that now require a license. This final regulation is intended to ensure that remediation of former meth labs—which present health and safety risks to residents and the public—is performed by licensed contractors with minimum competency to do so safely.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both.

The final regulations add a specialty designation for contractors that perform remediation of property that was formerly used to manufacture methamphetamine, as well as criteria that must be met in order to obtain and maintain the license specialty.

Also included in the final regulations is an amendment to the prohibited acts to require that work performed by these contractors conform to the remediation standards set forth by other identified agencies in the Commonwealth charged with overseeing such activity.

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.

1) The primary advantage to the public by adding this specialty, and the Board's decision to make it an exclusive specialty, is that it will provide an additional layer of protection to citizens that purchase properties that were formerly used to manufacture methamphetamine, as well as to the communities surrounding these properties, by ensuring that the contaminated materials are disposed of properly.

The proposed regulatory action also benefits the regulated community of contractors by ensuring those businesses and workers are properly trained in necessary safety precautions. Improper removal of the contaminated materials can put people—private citizens and residents, as well as the contractors themselves—at an increased risk of health problems that can even lead to death. Law enforcement investigators have been taking special precautions for more than a decade when dealing with these structures as first responders, but there has been no requirement that contractors remediating such properties have any special training or demonstrate any qualifications.

There are no disadvantages to the public in safely remediating any residue left behind at a property where methamphetamine was manufactured, which can contaminate indoor air and surfaces and cause serious health problems. Many of the ingredients used to make the illegal drug are known to permeate building material such as drywall, carpet, and flooring, and include chemicals such as pseudoephedrine, acetone, phosphine, and materials such as drain cleaners, paint thinners, ammonia, lye, engine starting fluid, and more. The production of hazardous waste and toxic vapors, even in residual amounts, can put individuals at risk for cancer, birth defects, and other illnesses.

2) There are no disadvantages posed by these regulations to the Board, the Department of Professional and Occupational Regulation, or the Commonwealth. The advantages include an increased layer of protection for citizens purchasing property used as a former meth lab and to the community as licensed contractors performing the work would be aware of the special steps that must be taken to remove, encapsulate, and dispose of contaminated materials.

3) In other states that have found it necessary to regulate businesses and individuals performing this type of remediation work, a standalone regulatory program often results. These proposed regulations will incorporate remediation work into the already existing regulations and will use the same eligibility criteria that are in place for all other contractors, avoiding the need for a separate licensing program and the additional fees and regulatory burden on the businesses. These final regulations offer the least burdensome compliance option available to businesses while providing much needed protection to citizens, striking an appropriate balance that should be attained when looking at regulations. No disadvantages have been identified.

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.

At this time there are no applicable federal mandates in place regarding the licensure of businesses or individuals that perform remediation of property that was used to produce methamphetamine. (The U.S. Environmental Protection Agency publishes voluntary best practice guidelines, upon which the Virginia Department of Health guidelines rely heavily.)

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.

The location of those areas that might be particularly affected by the final regulations, and the extent of such impact, is directly related to the number of properties formerly used to manufacture methamphetamine that require remediation. At the time of the passage of the enabling legislation for this licensing requirement, data suggested the majority of such properties were located in the Southwest and Valley regions of Virginia. However, news reports indicate former meth labs are discovered in every area of the Commonwealth.

The final regulations may result in a slight delay in remediating these properties because the contractor businesses performing the work will be required to obtain licensure. After the initial period, when those currently performing the work become licensed, the result in those localities should be positive, as businesses performing the work will have been vetted by the Board for Contractors to ensure minimum competency and an understanding of the requirements in place for doing remediation work. With no licensing requirement or vetting process currently in place, there is an increased exposure to risk involving the proper remediation of these properties and disposal of the hazardous materials associated with that remediation.

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.

The implementation of the final regulations will have no impact on the institution of the family or family stability.

Changes made since the proposed stage

Please list all changes that made to the text since the proposed regulation 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 proposed text of the regulation. *Please put an asterisk next to any substantive changes.

No changes were made to the text since the proposed regulations were published in the Virginia Register of 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 during the public comment period.

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 50-22-30		Lists the definitions of specialty services currently licensed by the Board for Contractors	Adds the definition of the scope of practice for contractors performing drug lab remediation. This definition provides that it includes the demolition or disposal of structures or other property and restricts remediation of drug labs to this specialty.
18 VAC 50-22-40 B		Lists the requirements that must be met by Qualified Individuals of licensed Class C contractors	<p>Adds the requirement that applicants for the drug lab remediation specialty complete a remediation course approved by the Board for Contractors and a subsequent examination.</p> <p>The Qualified Individual attached to a contractor license is the person that has the knowledge, skills, and experience in the specific specialty that allows the business to hold that specialty on its license. Currently, about a third of the specialties require that the Qualified Individual either hold an individual license or certification issued by the Board for Contractors or another regulatory body, or obtain certification/training from an accepted source.</p>

			<p>Nationwide there are several states and localities that have some form of regulation over businesses that perform this type of remediation work. Most of those states and localities require at least one individual associated with the business complete a recognized certification program. Staff of the Board for Contractors conducted a cursory search of education providers that offered courses that were certified by OSHA or other agencies, and was able to locate a dozen that were approved by most states that regulate remediation contractors.</p> <p>The completion of a course from a provider that has been vetted by the Board in the same manner currently used for vocational training providers and continuing education courses, along with experience commensurate with the class of license being held or applied for by the business, will afford the most protection to citizens, while being the least burdensome to the licensee/applicant. These requirements are also consistent with those currently in place for other license specialties and classifications, so this particular specialty does not require more stringent qualifications.</p>
<p>18 VAC 50-22- 50 C</p>		<p>Lists the requirements that must be met by Qualified Individuals of licensed Class B contractors</p>	<p>Adds the requirement that applicants for the clandestine drug lab remediation specialty complete a remediation course approved by the Board for Contractors and a subsequent examination.</p> <p>The Qualified Individual attached to a contractor license is the person that has the knowledge, skills, and experience in the specific specialty that allows the business to hold that specialty on its license. Currently, about a third of the specialties require that the Qualified Individual either hold an individual license or certification issued by the Board for Contractors or another regulatory body, or obtain certification/training from an accepted source.</p> <p>Nationwide there are several states and localities that have some form of regulation over businesses that perform this type of remediation work. Most of</p>

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<p>18 VAC 50-22-60 C</p>		<p>Lists the requirements that must be met by Qualified Individuals of licensed Class A contractors</p>	<p>Adds the requirement that applicants for the drug lab remediation specialty complete a remediation course approved by the Board for Contractors and a subsequent examination.</p> <p>The Qualified Individual attached to a contractor license is the person that has the knowledge, skills, and experience in the specific specialty that allows the business to hold that specialty on its license. Currently, about a third of the specialties require that the Qualified Individual either hold an individual license or certification issued by the Board for Contractors or another regulatory body, or obtain certification/training from an accepted source.</p> <p>Nationwide there are several states and localities that have some form of regulation over businesses that perform this type of remediation work. Most of those states and localities require at least one individual associated with the business complete a recognized certification program. Staff of the Board for Contractors conducted a cursory</p>

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<p>18 VAC 50-22-260 B</p>		<p>Lists prohibited acts that would be subject to disciplinary action by the Board for Contractors in accordance with the provisions of Chapters 1, 2 and 11 of Title 54.1 of the Code of Virginia and the Administrative Process Act.</p>	<p>Adds a prohibited act that makes it a violation of the Board for Contractors Regulations for a licensed contractor to fail to ensure that drug lab remediation is done consistent with the requirements set forth by the EPA, DEQ, VDH, or the Virginia Department of Forensic Science.</p> <p>The four agencies listed (one federal, three Virginia) are currently responsible for providing guidelines and requirements for the remediation of property that has been contaminated after being utilized as to manufacture methamphetamine.</p> <p>This prohibited act will somewhat ensure that properly licensed contractors performing remediation work in the Commonwealth will be using established guidelines in the preparation, remediation, and disposal processes.</p>