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## Proposed 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>	Board for Contractors Regulations
<b>Action title</b>	Addition of Miscellaneous Specialty
<b>Date this document prepared</b>	March 16, 2018 (revised Dec. 3, 2018)

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 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 informal fact-finding proceeding pursuant to Va. Code § 2.2-4019 and procedures currently in place to review other applications considered to be non-routine.

The Board for Contractors adopted these proposed regulations at its meeting on March 13, 2018.

## 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.

## Mandate and Impetus

*Please identify the mandate for this regulatory change, and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, board decision, etc.). For purposes of executive branch review, “mandate” has the same meaning as defined in Executive Order 14 (as amended, July 16, 2018), “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

The Board for Contractors initiated this proposed change 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 proposed 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 develop a definition to 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.*

- 1) 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. 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.

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.

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

### Requirements More Restrictive than Federal

*Please identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 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 identify any other state agencies, localities, or other entities particularly affected by the regulatory change. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, 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

### Economic Impact

*Pursuant to § 2.2-4007.04 of the Code of Virginia, please identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic*

*impact, specify which new requirement or change in requirement creates the anticipated economic impact. Please keep in mind that this is change versus the status quo.*

**Summary**

The Board for Contractors is revising the Contractors Regulations by adding a new miscellaneous specialty. No state fiscal impact is expected as a result of the change.

All costs incurred in support of board activities and regulatory operations are paid by the Department of Professional and Occupational Regulation (Department) and funded through fees paid by applicants and regulants. All boards within the Department 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.

**Impact on State Agencies**

<i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail; b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	No fiscal impact is anticipated from the proposed regulation change. Administrative costs are negligible because review of non-routine applications is already performed by a committee of the Board.
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	No anticipated economic impact on other state agencies.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The regulatory changes will allow the Board to provide a less burdensome, more business friendly path for niche contractors to obtain licensure.

**Impact on Localities**

Projected costs, savings, fees or revenues resulting from the regulatory change.	No projected impact to localities is expected.
Benefits the regulatory change is designed to produce.	N/A

**Impact on Other Entities**

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	Contractor businesses that currently do not have a Virginia contractor license could now potentially qualify for and obtain a license with the miscellaneous specialty.
Agency's best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	Fewer than 100 new licensees are expected from this change in the regulations. Most new applicants would be considered small businesses.
All projected costs for affected individuals, businesses, or other entities resulting from the	If a contractor decides to obtain a contractor license with the miscellaneous specialty, the

<p>regulatory change. Please be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> <li>a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;</li> <li>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;</li> <li>c) fees;</li> <li>d) purchases of equipment or services; and</li> <li>e) time required to comply with the requirements.</li> </ul>	<p>application fees would \$385 for a Class A license, \$370 for a Class B license, or \$235 for a Class C license.</p> <p>The proposed regulations would not affect the development of real estate for commercial or residential purposes.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The additional specialty will enable some contractors to obtain a contractor license when they otherwise would not qualify for a license.</p>

### Alternatives

*Please describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

These proposed regulations are an alternative to those already in place. The proposed amendments will be less intrusive and, likely, less costly for all businesses.

### Regulatory Flexibility Analysis

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

- 1) These proposed regulations do not establish any reporting requirements and the initial compliance requirements are equal to those already in place for all other contractors, both currently licensed and those applying for licensure.
- 2) There are no deadlines for compliance or reporting requirements established with these proposed regulations.
- 3) As there are no compliance or reporting requirements established with these proposed regulations there is nothing to consolidate or simplify.
- 4) N/A
- 5) There are no exemptions set forth in the statutes for the exemption of small businesses from the requirements to be licensed when performing contracting work; therefore, there are no such exemptions in the regulations.

**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.*

<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
Matt Jaroneski	How many contractors and what percentage of contractors would be affected by this? What are examples of these specific specialties? As the number of participants in the miscellaneous grouping increases what would trigger when a new classification be created for overall management?	<p>As this is a new specialty, it would be difficult to accurately predict how many licensees would actually apply for this specialty. A review of anecdotal evidence suggests that the total number of contractors that would fall under this category may be 50 to 100.</p> <p>This is itself a specialty, but examples of activities that might fall under the miscellaneous specialty would include: a company that only installs theatre curtains, a company that only installs guardrails, a company that only welds ornamental iron, etc. While the Board for Contractors would make the final decisions, these are some examples of what might fall under the proposed specialty.</p> <p>Periodically, the Board for Contractors reviews its specialties and amends them as necessary. There have been two major specialty changes and several minor ones since 1995. The Board would track and review the types of activities that apply for or receive the miscellaneous specialty and would make amendments to the current specialties as deemed warranted.</p>
Dane Farrell – Hearth, Patio & Barbeque Association	Association believes that the miscellaneous specialty would protect and aid small business growth in the Commonwealth as well as contribute to greater levels of public safety.	No response requested.

**Public Participation**

*Please include a statement that in addition to any other comments on the regulatory change, the agency is seeking comments on the costs and benefits of the regulatory change and the impacts of the regulated community. Also, indicate whether a public hearing will be held to receive comments.*

In addition to any other comments, the Board is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Written comments must include the name and address of the commenter.

Comments may also be submitted by mail, email or fax to:

Eric L. Olson, Executive Director  
 Board for Contractors  
 9960 Mayland Dr., Suite 400  
 Richmond, VA 23233  
[contractor@dpor.virginia.gov](mailto:contractor@dpor.virginia.gov)  
 (866) 430-1033 (Fax)  
 (804) 367-2785 (Phone)

In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage, and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

## Detail of Changes

*Please list all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation.*

*If the regulatory change will be a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory change. Delete inapplicable tables.*

*If the regulatory change is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below. Please include citations to the specific section(s) of the regulation that are changing.*

For changes to existing regulation(s), please use the following chart:

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new 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.	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

			<p>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 (e.g., electrical, HVAC, plumbing, gas-fitting, liquefied petroleum gas-fitting, natural gas-fitting, elevator/escalator, water well systems, accessibility services, lead abatement, and asbestos abatement). Work within those specialties would require that particular specialty and would not qualify for 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>
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<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 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>
<p>18 VAC 50-22- 50 B 4</p>		<p>Currently lists technical requirements for the Qualified Individual of Class B 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 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>
<p>18 VAC 50-22- 60 B 4</p>		<p>Currently lists technical requirements for the Qualified Individual of Class A 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 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>
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