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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	Amendments to classifications and specialties
Date this document prepared	November 20, 2015

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of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 seeks to amend the definitions of specialties and would like to add nine additional specialties. Currently many contractors are forced to select either the home improvement contracting specialty or the commercial contracting specialty if there is no separate specialty for the type of work that they perform. Each of those specialties requires a specialty examination to be passed that encompasses all aspects of home improvement or commercial improvement. The Board received numerous complaints from frustrated applicants that were having difficulty passing these examinations. To assist with the issue, the Board has decided to carve out nine more specialties so that those applicants can complete an exam more in line with the specific type of work that they perform.

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 technical terms or acronyms in this document that are not 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 the amended definitions specialties to include nine additional specialties to the Board for Contractors Regulations on November 10, 2015. The agency taking the action is the Department of Professional and Occupational Regulation.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’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.

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.

The Board seeks to amend the current regulations to correct “Commercial Improvement Contracting” and “Radon Mitigation Contracting”. The Board seeks to amend the current regulations to add specialties for “Drywall Contracting”, “Finish Carpentry Contracting”, “Flooring and Floor Covering Contracting”, “Framing Subcontractor”, “Glass and Glazing Contracting”, “Insulation and Weather Stripping Contracting”, “Steel Erection Contracting”, “Tile, Marble, Ceramic, and Terrazzo Contracting”, and “Underground Utility and Excavating Contracting”.

The amendments to the definitions will serve multiple purposes related to the health, safety and welfare of 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 will complete specific contracting work.

Substance

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

18 VAC 50-22-30 of the Board for Contractors Regulations defines the scope of practice allowed for each specialty. The proposed amendments would add specific specialties that are currently under a more general specialty in order that contractors that perform those specific specialties are not required to complete an examination in areas in which they do not perform work. The proposed amendments would also clarify the definitions of these specialties to reflect changes in the industry and the Virginia Uniform Statewide Building Code, if applicable.

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) 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.

2) The amendment of these regulations will be advantageous to the Agency by decreasing the amount of contact time required with the current regulant population and potential applicants, which often require technical assistance in understanding the current regulatory requirements. Reallocating the time currently spent on providing technical assistance and explanations regarding the examination requirements to the actual processing of these applications will result in a reduction in the processing time, 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.

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.

There are no applicable federal requirements.

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.

There will be no localities particularly affected by this proposed regulatory action.

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.

- 1) The proposed regulations have no impact on strengthening or eroding the authority and rights of parents in the education, nurturing, and supervision of their children.
- 2) The proposed regulations could encourage economic self-sufficiency and self-pride by allowing a person skilled in one of the new specialties a better opportunity to pass the required exam and acquire the license. The Board has heard from many frustrated and embarrassed applicants that have failed the required exam multiple times.
- 3) There is no impact on strengthening or eroding the marital commitment.
- 4) There is potential for a positive increase in disposable family income. The new specialties will remove some barriers to licensure. For example, someone that just does insulation work may not have applied for a contractor license if they were nervous they would not pass the Home Improvement Exam. Now they would be able to take an Insulation Exam.

Changes made since the proposed stage

*Please list all changes that made to the text of the proposed regulation 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.*

Section number	Requirement at proposed stage	What has changed	Rationale for change
18 VAC 50-22-30	At the proposed stage, eight additional specialties were added to the definitions.	A ninth specialty, "Framing Subcontractor", has been added to the list of definitions.	Currently, contractors that performed framing work are required to have the Building Classification. Contractors that limit their work to framing have had a difficult time passing the technical examination because it is comprehensive and covers all aspects of new home construction. Additionally, by requiring framers to hold the Building Classification, it allowed a contractor with a very restrictive skill set to become licensed to perform all aspects of a construction project, which could lead to difficulties for the consumer. The Board originally looked at the addition of framing as a specialty during the NOIRA stage and during discussions prior to the adoption of proposed regulations. When conducting the review of the final regulations, the subject of adding a framing specialty was discussed again and, based partially on anecdotal information received from staff regarding framing contractors who have communicated with the licensing staff regarding the difficulty of passing the technical examination, the Board determined that it should have the specialty added to the final regulations.
18 VAC 50-22-30	At the proposed stage, a new specialty was added for "Underground Utility and Excavating	The definition that was developed at the proposed stage was cumbersome and had unnecessary language. The Board deleted	Having a definition that long and with so many items listed within the definition makes difficult

	Contracting”	modified the definition to make it more concise and easier to understand.	to read and understand. These changes make the definition easier to understand.
18 VAC 50-22-30	At the end of the section, there is a list of activities and items that would be covered under the CIC, HIC, FIC specialties or the BLD classification.	Several items were left in the list at the proposed stage that needed to be removed from the list due to the new specialties.	All of the items removed from the list now have a specialty that is dedicated to that particular activity or item so the no longer need to be listed.

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.

Commenter	Comment	Agency response
Fred Codding	Representing the National Association of Reinforcing Steel Contractors (NARSC). They strongly support the establishment of steel erection being a separate specialty. They specifically like that the definition includes the “placement and tying” of reinforcing steel and post-tensioning.	Mr. Codding: The Board for Contractors has reviewed your statement and thanks you relaying the association’s support of the proposed new specialty of Steel Erection Contracting. The Board has voted to adopt these proposed regulations as final.
Charles Oakley	Mr. Oakley is self-employed and installs blinds and draperies. He does subcontracting work for companies including Home Depot. He has applied for a Class C license. He has paid \$175 for the pre-license course and \$235 for the application fee. He has also paid the \$85 to take the Home Improvement Exam and has failed the exam. He states that the exam has nothing to do with installing blinds and draperies. This is preventing him from getting jobs. He would be happy to take an exam that pertains to the work he does. He did have a previous license that he let expire and was not required to take the exam at that time.	Mr. Oakley: The Board for Contractors has received your public comment about the proposed amendments to the specialty regulations. At this time the Board has chosen not to make a separate specialty for Blinds and Draperies. That type of work will continue to fall under with the Home Improvement Contracting Specialty or the Commercial Improvement Contracting Specialty. The examination is required for those specialties because once that specialty is put on the license; your company is fully licensed to do all aspects of that work. Your previous license did expire on 11/30/06. Regulations require that after a license has been expired for more than one year, a new license must be acquired and all new requirements must be met. Please notify us once the exam has been passed so that we may issue the license to Oakley Drapery Service LLC.

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		The definition of Commercial Improvement Contracting states that CIC is a classification.	Proposed changes will correct the definition to describe CIC as a specialty and not a classification.
18 VAC 50-22-30			Addition of drywall contracting specialty and definition. Contractors that perform only drywall work will be able to take an exam specific to drywall and will no longer have to take the home improvement, commercial improvement or building exams. The three letter code for this new specialty will be DRY.
18 VAC 50-22-30			Addition of finish carpentry specialty and definition. Contractors that perform only finish carpentry work will be able to take an exam specific to finish carpentry and will no longer have to take the home improvement, commercial improvement or building exams. The three letter code for this new specialty will be FIN.
18 VAC 50-22-30			Addition of flooring and floor covering contracting specialty and definition. Contractors that perform only flooring work will be able to take an exam specific to flooring and will no longer have to take the home improvement, commercial improvement or building exams. The three letter code for this new specialty will be FLR.
18 VAC 50-22-30			Addition of framing subcontractor specialty and definition. Subcontractors that perform framing work, while working for a licensed prime contractor, will be able to take an exam specific to framing and will no longer have to take the building exam. The three letter code for this new specialty will be FLR.
18 VAC 50-22-30			Addition of glass and glazing contracting specialty and definition. Contractors that perform only glass and glazing work will be able to take an exam specific to glass and glazing and will no longer have to take the

			home improvement, commercial improvement or building exams. The three letter code for this new specialty will be GLZ.
18 VAC 50-22-30			Addition of insulation and weather stripping contracting specialty and definition. Contractors that perform only insulation and weather stripping work will be able to take an exam specific to insulation and weather stripping and will no longer have to take the home improvement, commercial improvement or building exams. The three letter code for this new specialty will be INS.
18 VAC 50-22-30		The definition of radon mitigation contracting requires the contractor to also have either the BLD classification, CIC, FIC or HIC specialties.	Proposed changes will remove the requirement for radon mitigation contractors to hold additional specialties to qualify for this one. This isn't a requirement for any other specialty or classification. This places an unnecessary burden on radon mitigation contractors.
18 VAC 50-22-30			Addition of steel erection contracting specialty and definition. Contractors that perform only steel erection work will be able to take an exam specific to steel erection and will no longer have to take the highway/heavy or building exams. The three letter code for this new specialty will be STL.
18 VAC 50-22-30			Addition of tile, ceramic, and terrazzo contracting specialty and definition. Contractors that perform only tile, ceramic, and terrazzo work will be able to take an exam specific to tile, ceramic and terrazzo and will no longer have to take the home improvement, commercial improvement or building exams. The three letter code for this new specialty will be TMC.
18 VAC 50-22-30			Addition of underground utility and excavating contracting specialty and definition. Contractors that perform only underground utility and excavating work will be able to take an exam specific to underground utility and excavating and will no longer have to take the highway/heavy exam. The three letter code for this new specialty will be UUC.