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Proposed 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	January 20, 2016

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 (preferably no more than 2 or 3 paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed.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 proposes 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 would 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 proposed 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.

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.

This particular proposed 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 proposal 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. A more detailed discussion is provided in the “Detail of changes” section below.

The proposed amendments to the 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.

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 residue left behind at a property where methamphetamine was manufactured can contaminate indoor air and surfaces, causing 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. Structures formerly used as meth labs are treated as hazardous material sites, which require the donning of protective clothing (even by law enforcement investigators) and special remediation techniques.

There are currently twenty-five states that have regulations or statutes in place that outline requirements for the remediation of former drug laboratories or regulate the individuals or businesses that perform such work. According to the U.S. Drug Enforcement Agency, in CY 2014 there were 309 meth lab incidents in Virginia (defined as labs, dumpsites, or chemical and glassware seizures).

In 2016, the General Assembly enacted and the Governor signed into law, legislation to add the remediation of former meth labs to the definition of “contractor” found in § 54.1-1100 of the Code of Virginia. These businesses will now be required to be licensed by the Board for Contractors and must demonstrate that they have both the technical ability and financial stability to perform such work in a way that protects the public’s health, safety, and welfare.

Although the Board did not have a say in the passage of the legislation—nor is its implementation discretionary—it is generally accepted that the remediation, demolition, or removal of properties that were used for the production of methamphetamine requires additional knowledge and skills that are not generally part of what would be considered regular construction work. The 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.

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.

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 Contractors Board 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 proposed amendments 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 this proposal, and the extent of that affect, 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. News reports indicate former meth labs are discovered in every area of the Commonwealth, however.

The promulgation of these regulations may result in a 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.

Public participation

Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal and the impacts of the regulated community.

In addition to any other comments, the Board for Contractors is seeking comments on the costs and benefits of the proposal and the potential impacts of this regulatory proposal. Also, the agency/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 by mail, email or fax to Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, fax to (866) 430-1033, or email to contractors@dor.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. 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 (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

Economic impact

Please identify the anticipated economic impact of the proposed new regulations or amendments to the existing regulation. When describing a particular economic impact, please specify which new requirement or change in requirement creates the anticipated economic impact.

Summary:

The Board for Contractors proposes to amend its regulations to add a drug lab remediation specialty for The new requirement will ensure that only properly trained contractors perform remediation services on residential property formerly used as to manufacture methamphetamine. No fiscal impact is expected from this regulatory change.

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

Economic Impact:

<p>Projected cost to the state to implement and enforce the proposed regulation, including:</p> <p>a) fund source / fund detail; and b) a delineation of one-time versus on-going expenditures</p> <p>See Fiscal Impact by year below:</p>	<p>There are no projected costs to the state to implement and enforce the specifics of this proposed regulatory action.</p>
<p>Projected cost of the new regulations or changes to existing regulations on localities.</p>	<p>There are no projected costs to localities.</p>
<p>Description of the individuals, businesses, or other entities likely to be affected by the new regulations or changes to existing regulations.</p>	<p>Contractor business entities that perform remediation services. There is no affiliated individual license or certification.</p>

<p>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.</p>	<p>Fewer than 50 contractors are expected to be affected by the regulation change. Most of the contractors would be considered small businesses.</p>
<p>All projected costs of the new regulations or changes to existing regulations for affected individuals, businesses, or other entities. Please be specific and include all costs including: a) the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; and b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the proposed regulatory changes or new regulations.</p>	<p>The only costs will be those for initial licensure and renewal identical to Class A, B, and C applicants and licensees. The application fee for a Class C contractor is \$235.</p>
<p>Beneficial impact the regulation is designed to produce.</p>	<p>The new requirement will ensure that only properly trained contractors perform remediation services for residential property formerly used to manufacture methamphetamine.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. 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 regulation.

The Board considered the establishment of a new license type, solely for the purposes of remediation, but implementation would include costs associated with programming changes to the existing licensing database and the cost of new licenses to those existing licensed contractors that may currently perform remediation work. Adding the activity as a specialty designation reduces the IT development costs and the costs to those existing licensees that would only be adding a specialty to a current license (\$110) rather than having to obtain and maintain a new license (approximately \$235 initially with separate renewal costs).

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) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4)

the establishment of 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 proposed regulation.

- 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) There are no performance standards for small businesses established by these proposed regulations. Performance requirements for the remediation of properties formerly used to manufacture methamphetamine are set forth by other agencies.
- 5) The enabling legislation establishing the requirement for contractors to be licensed when performing drug lab remediation work provides no exemption for small businesses; therefore there are no such exemptions in the proposed regulations.

Periodic review and small business impact review report of findings

If you are using this form to report the result of a periodic review/small business impact review that was announced during the NOIRA stage, please indicate whether the regulation meets the criteria set out in Executive Order 17 (2014), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. In addition, as required by 2.2-4007.1 E and F, please include a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

This regulatory action is not the result of a periodic review or small business impact review.

Public comment

Please summarize all comments received during the public comment period following the publication of the NOIRA, and provide the agency response.

There was no comment received during the public comment period.

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 these proposed regulations will have no impact on the institution of the family or family stability.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is 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 action. If the proposed regulation is intended to replace an emergency regulation, please follow the instructions in the text following the three chart templates below.

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

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</p>

			<p>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 those states and localities require at least one individual associated with the business complete a recognized certification program. Staff of the Board</p>

			<p>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- 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 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 50-22-260 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>