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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) Chapter citation(s)	18 VAC 50-22
VAC Chapter title(s)	Board for Contractors Regulations
Action title	SDS Specialty Split
Date this document prepared	June 30, 2020

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 (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of the subject matter, intent, and goals of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation).

The Board for Contractors seeks to take the existing Sewage Disposal System Contracting specialty in 18 VAC 50-22-30 and divide it into two new specialties: alternative sewage disposal system contracting and conventional sewage disposal system contracting. This will align the licensing of the contractor licenses for these specialties, issued by the Board for Contractors, with the individual licenses of the specialties issued by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals.

Acronyms and Definitions

Define all acronyms or technical definitions used in this form.

There are no acronyms or technical definitions used in this form that are not specifically identified.

Mandate and Impetus

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, or board decision). 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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

§ 54.1-2301 A of the Code of Virginia and 18 VAC 160-40 of the Virginia Administrative Code provide the authority and outline requirements for the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals to issue license to individuals in the categories of alternative onsite sewage system installer and conventional onsite sewage system installer. Additionally, the VAC defines the two types of systems. The Board for Contractors currently issues licenses to contractors with the Sewage Disposal System Contracting specialty (SDS), which does not delineate alternative or conventional systems. The Qualified Individual of a licensed contractor holding the SDS specialty must hold an installer license (either alternative or conventional) in order for the company to qualify for the specialty on its license.

Legal Basis

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

§ 54.1-1102 A of the Code of Virginia provides the Board for Contractors with the authority to promulgate regulations not inconsistent with the statute necessary for the licensure of contractors.

Purpose

Describe the specific reasons why the agency has determined that this regulation is essential to protect the health, safety, or welfare of citizens. In addition, explain any potential issues that may need to be addressed as the regulation is developed.

The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals (WWWOSSP) currently issues journeyman and master level licenses to individuals that install conventional and alternative onsite sewage systems, which are defined in the regulations. The two types of systems are inherently different and require a different skill level to install. The Board for Contractors currently issues licenses to contractor businesses that includes the sewage disposal system contracting specialty (SDS). This specialty does not identify whether the contractor is licensed to install conventional or alternative systems, which can be confusing to consumers. Additionally, in order to obtain the SDS specialty on its license a contractor business must have a Qualified Individual who holds either a conventional or alternative installer license from WWWOSSP with both being acceptable. Since the Board for Contractors does not differentiate between the two types of systems with the current licensing scheme, a contractor that is not properly licensed with WWWOSSP to install an alternative system

would not be in violation of the Board for Contractors Regulations for working outside the scope of their license. This is not only confusing to consumers but could lead to harm from both a health standpoint and an economic standpoint. The proposed amendments to these regulations would split the current specialty into two categories that match the current licensing requirements of WWOOSP. This would eliminate confusion regarding the type of system installation the license allowed and could eliminate harm done by improperly licensed contractors.

Substance

Briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.

18 VAC 50-22-30 would be amended to eliminate the definition of Sewage Disposal System Contracting and two new specialties would be created: Alternative Sewage Disposal System Contracting and Conventional Sewage Disposal System Contracting. The requirements sections for the license classes (18 VAC 50-22-40, 18 VAC 50-22-50, and 18 VAC 50-22-60) would also be amended further clarify the requirements for the Qualified Individual.

Alternatives to Regulation

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.

There are no alternatives to this regulatory action that would meet the requirements of its purpose or would address the current issues being experienced by the two regulatory boards and the public.

Periodic Review and Small Business Impact Review Announcement

This NOIRA is not being used to announce a periodic review or a small business impact review.

Public Participation

Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below. In addition, as required by § 2.2-4007.02 of the Code of Virginia describe any other means that will be used to identify and notify interested parties and seek their input, such as regulatory advisory panels or general notices.

The Board for Contractors is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, and (iii) the potential impacts 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>. Comments may also be submitted by mail, email or fax to Marjorie King c/o Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, telephone (804) 367-2785, fax (866) 430-1033, email: contractor@dpor.virginia.gov. 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.