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Proposed Regulation 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	February 1, 2021

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 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 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 used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

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the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."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

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 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 WWWOOSSP. 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, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of Changes” section below.

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.

Issues

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.

The primary advantage for the public is that contractors who are not properly licensed with WWWOOSSP would not hold a specialty they are not licensed to perform. Individuals and companies that do not meet the qualifications would be required to obtain the appropriate license from WWWOOSP, master conventional or alternative installer license, and then add the corresponding specialty to the contractor license.

The only disadvantage to the public, private citizens, or businesses is the fact that individuals or businesses may be required to meet additional eligibility criteria with the WWWOOSSP Board if both specialties are required.

This regulatory change will align the two boards, Board for Contractors and WWWOOSSP.

Requirements More Restrictive than Federal

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 currently no Federal requirements for licensure or certification to install a conventional or alternative sewage disposal system.

Agencies, Localities, and Other Entities Particularly Affected

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

No other State agencies are particularly affected.

Localities Particularly Affected

No other localities are particularly affected.

Other Entities Particularly Affected

No other entities are particularly affected.

Economic Impact

Pursuant to § 2.2-4007.04 of the Code of Virginia, 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. Keep in mind that this is change versus the status quo.

**Board for Contractors
Economic and Fiscal Impact of Proposed Regulation**

Summary:

The Board for Contractors is amending the Contractors regulations to replace one specialty with two new specialties. The Sewage Disposal System Contracting (SDS) specialty will be split into two new specialties: Alternative Sewage Disposal System Contracting and Conventional Sewage Disposal System Contracting. The change will have no state fiscal impact.

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

<p><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</p>	<p>There are no savings and no changes to costs, fees, or revenues of DPOR resulting from this regulatory change.</p>
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<p>c) whether any costs or revenue loss can be absorbed within existing resources</p>	
<p><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.</p>	<p>There are no savings and no changes to costs, fees, or revenues of other state agencies resulting from this regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change will align these contractor specialty licenses, 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. This will help ensure the contractors work on the type of sewage disposal system for which they are licensed, conventional, alternative or both.</p>

Impact on Localities

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>There are no savings and no changes to costs, fees, or revenues of localities resulting from this regulatory change.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>There are no benefits to localities.</p>

Impact on Other Entities

<p>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.</p>	<p>All currently licensed contractors with the SDS specialty and all applicants for a contractor's license with the specialties of alternative sewage disposal system contracting and conventional sewage disposal system contracting, are affected.</p>
<p>Agency's best estimate of the number of such entities that will be affected. 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>There are 494 licensed contractors with SDS Specialty currently. There are 334 master conventional installers and 279 master alternative installers licensed by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. Once this change goes into effect, the company will only have the corresponding specialty in which the Qualified Individual qualifies for, and it's extremely likely the companies will submit an Add Specialty application with the Board to obtain the second specialty. Approximately 200 licensed contractors are expected to apply to add a specialty to their license.</p> <p>Although no data are available to determine the contractor companies' sales and number of employees, most of the affected contractors would be considered small businesses.</p>

<p>All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to:</p> <ul style="list-style-type: none"> a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements. 	<p>Only licensed contractors that chose to add a specialty to their current license would incur the \$110 cost of such application. No other costs are expected for individuals and businesses affected.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>The regulatory change will align these contractor specialty licenses, 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. This will help ensure the contractors work on the type of system for which they are licensed, conventional, alternative or both.</p>

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.

Regulatory Flexibility Analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, 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.

This regulatory change aligns the Board for Contractors with WWOSSP.

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 is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable.

In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (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. Also, discuss why the agency’s decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

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

Public Comment

Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.

Commenter	Comment	Agency response
	No Comments	

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.

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, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document.

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.

Detail of Changes

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. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.

Table 1: Changes to Existing VAC Chapter(s)

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
18 VAC 50-22-30		<p>"Sewage disposal systems contracting" (Abbr: SDS) means the service that provides for the installation, repair, improvement, or removal of septic tanks, septic systems, and other onsite sewage disposal systems annexed to real property.</p>	<p>The current Sewage disposal systems contracting (SDS) specialty definition is being split into two, Alternative sewage disposal system contracting (ADS) and Conventional sewage disposal system contracting (CDS).</p> <p>"Alternative sewage disposal system contracting" (Abbr: ADS) means the service that provides for the installation, repair, improvement, or removal of a treatment works that is not a conventional onsite sewage system and does not result in a point source discharge. No other classification or specialty service provides this function.</p> <p>"Conventional sewage disposal system contracting" (CDS) means the service that provides for the installation, repair, improvement, or removal of a treatment works consisting of one or more septic tanks with gravity, pumped, or siphoned conveyance to a gravity distributed subsurface drainfield. No other</p>

			classification or specialty provides for this function.
18 VAC 50-22-40		None	Clarifying the requirements to obtain a Class C license by outlining 18 VAC 50-22-40 B 4 e to state, "Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations, a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting".
18 VAC 50-22-50		None	Clarifying the requirements to obtain a Class B license by outlining 18 VAC 50-22-50 C 4 e to state, "Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations, a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting".
18 VAC 50-22-60		None	Clarifying the requirements to obtain a Class A license by outlining 18 VAC 50-22-50 C 4 e to state, "Has obtained, pursuant to the Onsite Sewage System Professionals Licensing Regulations, a master conventional onsite sewage system installer license for Conventional Sewage Disposal System Contracting and a master alternative onsite sewage system installer license for Alternative Sewage Disposal System Contracting".