



Proposed Regulation Agency Background Document

Agency name	Board for Contractors
Virginia Administrative Code (VAC) citation	18 VAC 50-22
Regulation title	Board for Contractors Regulations
Action title	Amendments to classifications and specialties
Date this document prepared	November 4, 2014

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive provisions of new regulations or changes to existing regulations that are being proposed in this regulatory action.

The Board seeks to review and amend the definitions of classifications and specialties. The proposed amendments are to amend two existing specialties and add eight additional specialties.

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.

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 by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal, the environmental benefits, 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", "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 new substantive provisions (for new regulations), substantive changes to existing sections or both where appropriate. (More detail about all provisions or changes is requested in the "Detail of changes" section.)

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 the regulatory action poses 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 requirements of the proposal, which are more restrictive than applicable federal requirements. Include a rationale 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.

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/agency 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 may do so via the Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email or fax to Eric Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, email: contractor@dpor.virginia.gov, fax: (866) 430-1033. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last date of the public comment period.

A public hearing will be held after this regulatory stage is published in the *Virginia Register of Regulations* 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 (<http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>). 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. Please keep in mind that we are looking at the impact of the proposed changes to the status quo.

Board for Contractors
Economic and Fiscal Impact of Proposed Regulation

Summary:

The Board for Contractors regulations are being amended to modify two current specialty definitions and add eight additional new specialties. The new specialties will be more specific and will better describe the type of work performed by the contractor. 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 licensees. 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>Description of the individuals, businesses or other entities likely to be affected (positively or negatively) by this regulatory proposal. Think broadly, e.g., these entities</p>	<p>New contractor applicants and existing licensed contractors applying to add specialties are affected by this regulatory proposal.</p>
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may or may not be regulated by this board	
Agency's best estimate of the number of (1) entities that will be affected, including (2) small businesses affected. Small business means a business, including affiliates, that is independently owned and operated, employs fewer than 500 full-time employees, or has gross annual sales of less than \$6 million.	<p>1) Approximately 1,000 or fewer applicants per year will be affected by the regulation change. The Board receives on average approximately 5,875 applications each year. The exam vendor will also be affected, as additional exams for the new specialties will need to be offered.</p> <p>2) Approximately 990 of the 1,000 annual applicants are small businesses.</p>
Benefits expected as a result of this regulatory proposal.	The benefits of additional specialties will help consumers more easily understand the scope of work each contractor is allowed to perform. These additions also help the license holders from needing to take a specialty exam that does not focus specifically on the work they are performing.
Projected cost to <u>localities</u> to implement and enforce this regulatory proposal.	No anticipated costs to any locality.
All projected costs of this regulatory proposal for <u>affected individuals, businesses, or other entities</u>. Please be specific and include all costs, including projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses, and costs related to real estate development.	The exam vendor may incur some costs developing the new examinations needed. These costs are expected to be absorbed within the existing contract with the vendor. No other costs to individuals or other entities are expected.
Projected cost to the <u>state</u> to implement and enforce this regulatory proposal. See Fiscal Impact by year below:	<p>No costs to Virginia, the Department, or the Board are expected from this regulatory change.</p> <p>There is a possibility of additional revenue to the Board due to a potential increase in the number of applicants. However, the amount of the increased revenue is indeterminate at this time.</p>

	FY 2015	FY 2016	FY2017	FY2018
Fund	NGF (0900)	NGF (0900)	NGF (0900)	NGF (0900)
Program/Service Area	560 46	560 46	560 46	560 46

Impact of Regulatory Changes:				
One-Time Costs	\$0	\$0	\$0	\$0
Ongoing Costs	\$0	\$0	\$0	\$0

Total Fiscal Impact	\$0	\$0	\$0	\$0
FTE	0.00	0.00	0.00	0.00

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.

Changes to the definitions were the result of discussions regarding alternatives to regulations currently in place. The Board believes that failure to adopt these amendments will actually place an unnecessary burden on both the existing regulant population and future applicants for licensure.

The Board will consider all comments received during the public comment period as to the proposed alternatives.

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 establish 1) compliance or reporting requirements equal to or less stringent than those already in place.
- 2) There are no deadlines or reporting requirements required by these proposed regulations.
- 3) There are no reporting requirements proposed by these regulations.
- 4) There are no performance standards proposed by these regulations.
- 5) The overwhelming majority of businesses licensed as contractor by the Board for Contractors are small businesses, subsequently, every regulatory action undertaken by the Board affects small businesses. The Board for Contractors must promulgate regulations that provide an adequate level of protection to the public while, simultaneously ensuring that individuals and businesses are not given unnecessary burdens to licensure. The Board believes that these amendments are the least stringent that can be promulgated that will still deliver that protection.

Public comment

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

Commenter	Comment	Agency response
John Tubbs	<p>Requests a change in policy to allow a more reasonable and timely approach to obtain a floor covering contractor license. It shouldn't take an act of the General Assembly to correct a policy interpretation.</p> <p>Requests to be advised on what is being done to correct the unreasonable requirements currently in place to obtain a Class C floor covering contractor license. He has 30 years of experience and has not been able to pass the HIC specialty exam. He feels this exam is not relevant to his profession and has had to spend a lot of money on books and multiple exam fees.</p>	<p>The proposed regulatory changes will create a separate specialty for contractors that only perform work within the scope of the flooring industry. This will result in an examination that will be restricted to that particular industry and will not require the applicant to have a technical knowledge of any work outside that scope. Regulatory changes must be done in accordance with applicable statutes and Executive Orders and the existing procedures do not afford a quick solution to your concerns.</p>

Family impact

Please assess the impact of the proposed 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.

Detail of changes

Please list all changes that are being proposed and the consequences of the proposed changes. 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 list separately (1) all differences between the **pre-emergency** regulation and this proposed regulation, and (2) only changes made since the publication of the emergency regulation.*

For changes to existing regulation(s) or regulations that are being repealed and replaced, use this 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		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 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.