

Concise Explanatory Statement

Rhode Island Government Register

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, following is a concise explanatory statement:

AGENCY: Rhode Island Department of Business Regulation

DIVISION: Building, Design, and Fire Professionals

RULE IDENTIFIER: 440-RICR-10-00-1

REGULATION TITLE: **General Rules and Regulations for Applications, Registration, Licensing, Claims, Violations, and Administrative Hearings**

RULEMAKING ACTION: Full Rulemaking - Amendment

REASON FOR RULEMAKING:

To amend and update the administration and enforcement requirements for contractors in accordance RI Gen Laws Chapter 5-65, entitled Contractors' Registration and Licensing Board (CRLB).

CHANGES TO TEXT OF THE RULE:

A. Summary of Post-Comment Changes

There are no post-comment changes to this rule.

B. Summary of Comments Not Resulting in Regulatory Language Changes

Below is a summary of public comments received that did not result in changes to the text of the Regulation and a brief description of the Department's reasons for not making any such changes after due consideration.

1. *Several comments were received that pertained to removal of references to the APA and changes in formatting.*

These comments were technical in nature and not substantive. Changes made are in accordance with the APA and current formatting requirement.

2. *Definitions. §1.4*

After consideration of the comments, the Department has declined to make any changes as a result of this commentary because the definitions as proposed are necessary components of the proposal.

3. *RIGL 5-65-19 b requires service of final orders which could be for claims or violations. This modification would be in violation of the general law. § 1.5 A*

Upon review of the comment, this Section does comply with both R.I. Gen Law §§ 5-65-19(b) and 5-65-6

4. *Information Requests: Concerns as to how they be made in that telephone and electronic methods have been omitted? § 1.5(C)*

The changes made removed language that was inconsistent with the APRA Statute, and now clarifies that these requests shall be made *pursuant* to the APRA statute, which allows for any type of information request, including telephone and email. No need to restate what is already in law.

5. *Modifications will cause a lot of problems in regard to enforcement as to who is an employee and workers compensation enforcement. § 1.61 D & E*

The modifications actually simplify the process. There is no refunding of partial fees, this is an incorrect reading by the commenter.

6. *Is it a board approved provider or approved by another party? Why only three times a year? These companies test six days a week. Seems like hurting the industry and economy. Should be at least once a month. § 1.7.2*

The Department suggests that the commenter or either misread or misunderstands the proposed rule because examinations shall be administered *at least* 3 times per year, not *just* 3 times per year.

7. *No where do I see the requirement as specified in law of the issuance of a picture ID card. § 5-65-8 (b)*

With the move to e-permitting, contractors no longer have to physically come to the Department for their initial or renewal registrations/licenses, which is where the photos would be taken. Additionally, the online registration program does not have the capability to issue photo IDs. Finally, the elimination of photo IDs will result in a cost savings to the state, which has been supported by the Governor's Efficiency Commission. Legislative changes will be proposed.

8. *Nowhere does it require testing but request testing information? § 1.8.10A*

The Department does not know what the commentary refers to and cannot offer a response.

9. *Comments regarding changes to “claim process”*

Commentary was received regarding changes to the process in which claims are processed by the CRLB. Comments pertained to the timeframe in which the Board would attempt to resolve disputes (§ 1.10(B)), the usage of alternative dispute resolution (§ 1.11), the imposition of monetary fines and restitution (§ 1.10(F))

The Department conducted an extensive review of its claims investigations/adjudication process. It was learned that the current process was inefficient, wrought with inconsistencies, unfair to consumers, and grounded in questionable legal footing. In particular, the term “claim” was used interchangeably with “violation” causing increased confusion. In accordance with the Board’s rule making authority under R.I. Gen. Laws § 5-65-17, the claims process has been amended to the complaint process. Despite technical changes in phraseology, the substantive portions of the enabling acts remain intact, as does the legislature’s intent to provide the highest level of consumer protection available. The rules, as proposed, will simplify the process, move complaints to resolution quicker and provide a higher level of consumer protection. Thus, the Department has declined to make any changes as a result of this comment.

10. *Instructor Qualification No person may act as an instructor unless such person holds a registration/license and is in good standing with the Board for the discipline in which the course is offered for. § 1.8.10(c)*

§ 1.8.10(c)(2) does allow one who is qualified but not registered/licensed to teach. Thus, the Department has declined to make any changes as a result of this comment.

11. *A Hearing Officer cannot order the Respondent to pay monetary damages and/or restitution. Why? §1.10(F)(3)*

As discussed above, the Department review of the claims process revealed numerous issues that required changes. In part, the statute that allows a hearing officer to award monetary damages and/or restitution was ruled unconstitutional many years ago and there is ample case law to support the position that a hearing officer cannot determine the private rights of individuals, as are those borne in negligence and contract claims. Thus, the new process correctly sets the limits on the authority of the hearing office in a way that is commensurate with all hearing officers across the state and is consistent with similar legislation in other states. Thus, the Department has declined to make any changes as a result of this comment.

12. *A complete record of the proceedings shall be recorded on audiotape, or at the discretion of the Hearing Officer, by stenographic record. In this day and age a digital recording should be allowed. §1.15.10(E)*

In this day and age, the spirit of the rule is such that a recording of the proceeding should occur, and as times change, so does the manner of complying. Digital, audio, and/or

video recording of any means would be allowed. Thus, the Department has declined to make any changes as a result of this comment.

13. *Hard to provide picture ID and sign attendance sheet for on line courses. As required by this section. § 1.8.9*

The Department has declined to make any changes as a result of this comment.

14. *Once all appeal rights have been extinguished, if a Respondent fails to comply with a Final Order, or a decision of the Full Board, the Board may refer the case to the Office of the Attorney General for criminal prosecution. What type of decision? Only Final Orders by law can be prosecuted? § 1.14*

It is unclear what the commentary is referring to. The amendments as proposed comply with the Board's enabling act, as only Final Orders are being referred to the AG. Thus, the Department has declined to make any changes as a result of this comment.

15. *Is it possible to bypass the Board and go directly to Superior court to appeal a final order? § 1.15.1*

Appeals are conducted in accordance with the Department's enabling act and the Administrative Procedures Act. Thus, the Department has declined to make any changes as a result of this comment.

16. *An applicant registered as a commercial roofing contractor by the Board as of December 31, 2015, and who remains in good standing, may obtain a commercial roofing contractor's license without examination, and upon submission of a completed application. This date is not in law and seems to be arbitrary. Law needs to be reviewed or may need to be modified for a new date.*

Because of a multiyear delay in promulgating the regulations for licensure, the amendment proposed by the Board shifts the "grandfather date" to maintain the legislature's intent to allow specified contractors to attain licensure without having to meet the pre-licensing requirements. Thus, the Department has declined to make any changes as a result of this comment.

17. *Prior to January 1, 2020, the Board shall, without examination, upon receipt of the fees required in this chapter, issue a residential water-filtration/treatment-system installer's license to any applicant who shall present satisfactory evidence that they have the qualifications for the type of license applied for. After January 1, 2020, in order to qualify for a residential water-filtration/treatment installer's license the eligible individual shall be required to pass a written examination and show proof as required by the Contractors' Registration and Licensing Board of their eligibility. The law does not give board this authority like it did in the underground utility law and can't just arbitrarily say you will establish a grandfather clause. If in the law could follow date but rules can't establish date unless specified in act. § 6.7*

Because of a multiyear delay in promulgating the regulations for licensure, the amendment proposed by the Board shifts the “grandfather date” to maintain the legislature’s intent to allow specified contractors to attain licensure without having to meet the pre-licensing requirements. Thus, the Department has declined to make any changes as a result of this comment.

18. Additional comments: Concerns that open meeting violations exist in meeting minutes are not being filed in timely fashion and posted within time frame specified in law and information is not available to public. The Board was established over 29 years ago to help the construction industry and protect consumers, not to become a “cash cow” to fund other programs outside the scope of the Board. The law reads: (b) All fees and fines collected by the board shall be deposited as general revenues to support the activities set forth in this chapter until June 30, 2008. Beginning July 1, 2008, all fees and fines collected by the board shall be deposited into a restricted receipt account for the exclusive use of supporting programs established by this chapter. An audit may be necessary to assure that the funds earmarked for the board are used as the general law specifies. It may read a lot easier if the sections that were being used in the administrative section by the other disciplines instead of being sited were established at the beginning reflecting they were incorporated into the new section rather than keep referencing them over and over.

Commentary is unrelated to proposed regulations.

REGULATORY ANALYSIS:

This regulation does not impact small business. The societal benefit of updating this regulation is that the changes are specific to those contractors who are enumerated in R.I. Gen. Laws Chapter 5-65. In conjunction with 440-RICR-10-00-1, the overall regulatory scheme is now more clearly and concisely spelled out.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.