

**STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
CONTRACTORS STATE LICENSE BOARD
INITIAL STATEMENT OF REASONS**

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulation(s): Specialty Contractors Classified and Class C-49 – Tree and Palm Contractor

Section(s) Affected: Title 16, California Code of Regulations, Sections 832 and 832.49

Specific Purpose of Each Adoption or Amendment

Background

The Contractors State License Board's (CSLB or Board) mission is to protect consumers by regulating the construction industry through policies that promote the health, safety, and general welfare of the public in matters relating to construction. CSLB fulfills its mandate to protect the public, in part, by ensuring that only those individuals who meet the qualifications for licensure are granted contractor licenses in California. CSLB licenses more than 349,000 contractors (active, inactive, and expired but renewable) in 44 different license classifications, covering the broad range of construction trades performed by contractors. With limited exceptions (i.e., incidental and supplemental work), contractors licensed in one classification are prohibited from performing work in another classification unless they are also duly licensed in that classification. Licenses are issued to individuals, corporations, partnerships, limited liability companies, and joint ventures.

Business and Professions Code (BPC) section 7008 authorizes CSLB to adopt rules and regulations that are reasonably necessary to carry out the provisions of the Contractors State License Law. Section 7026.1 defines "contractor," which includes a person "who performs tree removal, tree pruning, stump removal, or engages in tree or limb cabling or guying." (Bus. & Prof. Code, § 7026.1, subd. (a)(4).) Subdivision (a)(4) excludes nurserypersons and gardeners. Section 7058 establishes the specialty contractor license and defines "specialty contractor" as "a contractor whose operations involve the performance of construction work requiring special skill and whose principal contracting business involves the use of specialized building trades or crafts." Section 7059 authorizes the Board to adopt rules and regulations to effect the classification of contractors in a manner consistent with established usage and procedure found in the construction business.

Consistent with that authority, CSLB has adopted California Code of Regulations (CCR), title 16, section 832, which lists specialty contractor license classifications. It has also adopted regulations containing descriptions and scopes of each individual specialty contractor classification that is designated as a “C” classification. (Cal. Code Regs., tit. 16, §§ 832-832.61.) Section 832.61 establishes the C-61 limited specialty contractor classification, under which the limited specialty “D” classifications exist that are limited to “a field and scope of operations of specialty contracting for which an applicant is qualified other than any of the specialty contractor classifications.” The “D” classifications presently include the existing D-49 – Tree Service contractor classification.

Problem Being Addressed

At CSLB’s June 15-16, 2017, Board meeting, CSLB Registrar David Fogt provided background information on the bark beetle infestation in California forests and noted that the extension of Governor Davis’s 2003 Proclamation of a State of Emergency on the bark beetle was under consideration. He said that the Department of Forestry estimated that over 100 million infected trees needed to be removed and there were approximately 32,000 CSLB licensees authorized to perform this work. Registrar Fogt further indicated that the Department of Forestry had multiple proposals to mitigate this public safety danger. He explained that CSLB will continue to partner with the Business, Consumer Services and Housing Agency (Agency) to provide needed information to the Governor’s Office on this matter.

During public comment at the Board meeting on June 16, 2017, Patrick Mahoney, President of West Coast Arborists, expressed concern about the increased number of accidents and lack of a prevailing wage within the California tree trimming industry. He noted that landscapers, whom he said were unqualified to perform tree trimming work, were increasing the frequency of tree trimming related accidents and diluting the higher tree trimming wage that is driven by the industry’s accident rate. Mr. Mahoney suggested that CSLB separate the tree trimming classification from that of landscaping to reduce the rate of tree-related accidents. A specialty classification and trade examination that focuses specifically on tree work could help ensure that such contractors have the requisite knowledge and skills to perform tree work safely.

In August 2017, CSLB staff met with members of the tree care industry regarding their concerns about prevailing wage rates, accidents and fatalities in the industry, and the current CSLB license classification structure. The industry raised the issue of inadequate safety training for those working in trees and indicated that some contractors have been known to misclassify the work performed in order to pay lower workers’ compensation premiums. In particular, the tree care industry expressed concern that the safety aspects of tree service work are not adequately covered by either CSLB license classification that can perform tree work because the C-27 – Landscaping classification is too broad, with a limited number of examination questions on this subject area, and the C-61/D-49 – Tree Service classification is a limited specialty classification that does not require any trade examination for licensure.

Furthermore, the Board reviewed the history and purpose of the C-61 limited specialty classification regulation and confirmed that CSLB policy was to re-establish a “D” classification into a “C” classification when the population in the “D” classification reached 1,000 licenses. The Board reasoned that at that number of licensees, the classification is no longer a “limited specialty.” As of May 1, 2020, there are currently 3,413 (3,185 active and 228 inactive) C-61/D-49 – Tree Service “limited specialty” licenses.

At its June 6, 2019, meeting, the Board approved a motion to submit proposed text for CCR sections 832 and 832.49 to the Director of the Department of Consumer Affairs and Agency for the purpose of creating a new license classification for tree and palm contractors (C-49).

As discussed below, this proposal seeks to address the health and safety issues relating to existing licensure for tree care work. CSLB proposes to adopt a new regulation establishing a C-49 – Tree and Palm specialty contractor classification at CCR section 832.49, replacing the existing C-61/D-49 – Tree Service limited specialty contractor classification, and to amend CCR section 832 to add the new C-49 – Tree and Palm classification to the listing of specialty contractor classifications.

Anticipated Benefits from This Regulatory Action

The Board proposes to redefine the licensure of contractors performing tree work by establishing a “C” specialty contractor classification for the work in place of the existing “D” limited specialty contractor classification. The Board will add a trade examination requirement to the existing experience and law and business examination requirements that applicants for the C-61/D-49 – Tree Service classification must currently complete for licensure.

Pursuant to BPC section 7000.6, protection of the public is CSLB’s highest priority in exercising its licensing, regulatory, and disciplinary functions. The primary methods by which CSLB achieves its consumer protection goals are: examining applicants and issuing licenses to qualified applicants; administering examinations; investigating complaints against licensed and unlicensed contractors; issuing citations and suspending or revoking licenses; seeking administrative, criminal, and civil sanctions against violators of the Contractors State License Law; providing consumer education and outreach; and establishing mandatory consumer disclosure requirements for contractors.

BPC section 7068(a) provides that CSLB “shall require an applicant to show the degree of knowledge and experience in the classification applied for, and the general knowledge of the building, safety, health, and lien laws of the state and of the administrative principles of the contracting business that the board deems necessary for the safety and protection of the public.” Pursuant to BPC section 7065(a), this must be done by written examination. However, BPC section 7065.01 provides that the trade examination is not required for the “D” limited specialty license classification. As a

result, C61/D-49 – Tree Service contractors are not subject to a written trade examination designed to test the licensee’s knowledge of tree service work and related health and safety laws for the protection of workers and the public, but they are required to take and pass the law and business examination. However, “C” specialty contractors are required to successfully complete a trade examination for licensure, as well as the law and business examination.

According to the U.S. Bureau of Labor Statistics, grounds maintenance workers, including tree trimming and removal specialists, have a fatality rate that is more than three times that of the average labor worker. A California Department of Industrial Relations, Division of Occupational Safety and Health (DOSH) investigation of tree service accidents that occurred between 2014 and 2016 found that 74% resulted in worker hospitalization and 16% resulted in death. The tree service industry is also subject to its own DOSH general safety orders in Article 12 (commencing with Section 3420) of Group 3 of Subchapter 7 of Chapter 4 of Division 1 of title 8 of the California Code of Regulations.

The tree service industry is a dangerous one that is subject to various health and safety laws for the protection of workers and the public. Consistent with CSLB’s public protection goals, the proposed changes will benefit the welfare of California residents who hire contractors for tree work by helping ensure that individuals who are licensed as C-49 – Tree and Palm contractors have the necessary knowledge, skills, and abilities, as tested in the trade examination, and are able to perform tree work in a safe, responsible, and effective manner.

Regulatory action is needed because, without the proposed language that creates the C-49 – Tree and Palm specialty contractor classification, there will be no such specialty classification and tree work will remain at the limited specialty contractor classification level without a trade examination requirement, which could pose a threat to CSLB’s top priority of public protection. Amendments to CCR section 832.49 will create a new C-49 – Tree and Palm specialty classification.

Factual Basis / Rationale

At its June 6, 2019 meeting, the Board voted to start the rulemaking process to amend CCR section 832 and to adopt CCR section 832.49 to create a new license classification for tree and palm contractors (C-49), as outlined below.

Specifically, the Board proposes the following regulatory changes:

Amend Section 832 – Specialty Contractors Classified.

Purpose

The existing regulation lists all existing specialty contractor classifications in alphabetical order.

The Board proposes to amend the regulation to add the C-49 – Tree and Palm contractor classification that it proposes to add under CCR section 832.49 to the list of specialty contractor classifications issued by CSLB. The C-49 – Tree and Palm contractor classification will be listed alphabetically between the Tile (C-54) and Warm-Air Heating, Ventilating and Air Conditioning (C-20) classifications.

Adopt Section 832.49 – Class C-49 – Tree and Palm Contractor.

Purpose

There is no existing regulation relating to a C-49 – Tree and Palm contractor classification. The existing C-61/D-49 – Tree Service limited specialty contractor classification is authorized under CCR section 832.61, which establishes the C-61 limited specialty contractor classifications (designated as “D” classifications) that are limited to a field and scope of operations of specialty contracting.

Add New Section Number and Title

This proposal will add a new section and title to introduce the new C-49 – Tree and Palm contractor classification. The addition of this new section and title will provide the basis for the new specialty classification for tree and palm work.

Add subdivision (a)

This proposal will add a new subdivision to establish the scope of work for the newly-created C-49 – Tree and Palm contractor classification, including planting, maintaining, and removing trees and palms, as well as pruning, stump grinding, and tree, palm, or limb guying.

The Board developed the core duties to be performed under this classification based on the duties contained in the existing C-61/D-49 – Tree Service limited specialty contractor classification description, as follows:

A tree service contractor prunes trees, removes trees, limbs or stumps (including grinding) and engages in tree or limb guying.

In addition to allowing work on trees, the Board determined that it is appropriate for this specialty classification to also include work on treelike plants in the palm family. The Areaceae is a botanical family of perennial plants, commonly known as “palms,” that grow in the form of climbers, shrubs, trees, and stemless plants. Those having the tree form are colloquially called “palm trees.” C-61/D-49 – Tree Service contractors have been licensed to perform work on palm trees for many years. Therefore, the Board decided to include palms explicitly in this new regulation to avoid any possible confusion.

In addition to the existing duties of the C-61/D-49 – Tree Service classification, the new C-49 – Tree and Palm classification includes authorization for such contractors to also plant trees and palms. This decision was based on input from the tree service industry and the fact that C-27 – Landscape contractors, who can also perform tree work, are allowed, among other duties, to install landscape systems and horticultural treatments or arrangements, which includes the planting of trees and palms. CSLB has always interpreted the C-27 – Landscape contractor classification, with respect to their scope of operations, as authorized to perform anything the D-49 – Tree Service contractor can perform. Therefore, it is appropriate for this new specialty classification, which will be the primary classification that relates to trees and palms, to also be authorized to plant the trees and palms and to maintain and remove them.

Add subdivision (b)

This proposal will add a new subdivision to establish a “grandfather” clause that will automatically reclassify existing licensees that hold the C-61/D-49 – Tree Service classification as new C-49 – Tree and Palm contractors.

The Board will cease to issue the existing C-61/D-49 – Tree Service classification when the new C-49 – Tree and Palm classification is approved and ready to be implemented. However, prior to implementation, the Board’s Testing Division will need to conduct an occupational analysis that will be the basis for the test plan for the trade examination for the new C-49 – Tree and Palm classification. The Board anticipates that the examination development process will take approximately 18 months. Therefore, the Board has built in an 18-month delay for the operation of the regulation and the reclassification of the existing C-61/D-49 – Tree Service contractors. The 18-month period will begin upon the effective date of this regulation.

In the past when CSLB has merged, reorganized, or reconfigured classifications, the Board has generally grandfathered in affected groups of licensees, as appropriate. The Board’s decision to reclassify the existing C-61/D-49 – Tree Service licenses through this grandfather clause also addresses the fact that an existing license cannot be taken away from a licensee without just cause or due process, but it can be replaced with an equivalent license under circumstances such as these. The reclassification will apply to active and inactive C-61/D-49 – Tree Service licenses that are current or expired but renewable because they are the only limited specialty licenses that are currently authorized or could be authorized upon active renewal to perform the relevant duties under CCR section 832.61.

Therefore, 18 months after the effective date of this regulation, all active and inactive licenses holding the existing C-61/D-49 – Tree Service limited specialty classification (3,413 licenses as of May 1, 2020) that are current or expired but renewable will automatically be reclassified by CSLB to the new C-49 – Tree and Palm contractor classification, and the Board will begin accepting new applications and administering trade examinations for the new C-49 – Tree and Palm classification.

Add subdivision (c)

This proposal will add a new subdivision to clarify that the C-49 – Tree and Palm contractor license is not required for specified tree work performed by a nurseryperson or gardener pursuant to BPC section 7026.1, which, in part, states the following:

The term contractor does not include a person performing the activities of a nurseryperson who in the normal course of routine work performs incidental pruning of trees, or guying of planted trees and their limbs. The term contractor does not include a gardener who in the normal course of routine work performs incidental pruning of trees measuring less than 15 feet in height after planting.

Because BPC section 7026.1 explicitly excludes nurserypersons and gardeners who perform tree work under certain circumstances from the need to be licensed, the Board determined that it would be appropriate and helpful for applicants for this license to intentionally duplicate such statutory language and include comparable language in this regulation to help avoid confusion about the fact that such individuals do not need to hold the C-49 – Tree and Palm contractor license to perform specified tree work in the normal course of their routine work.

Underlying Data

CSLB relies upon the following technical, theoretical, or empirical studies, reports, and/or documents for this proposal:

- CSLB June 15-16, 2017, Board Meeting Minutes
- CSLB June 6, 2019, Board Meeting Packet, Agenda Item G-4 – Review, Discussion, and Possible Action to Initiate Rulemaking to Add Title 16, California Code of Regulations (16 CCR) Section 832.49 and Amend 16 CCR Section 832 to Create a New License Classification (C-49) for Tree and Palm Contractors
- Excerpt from CSLB June 6, 2019, Board Meeting Minutes (Pages 10 and 28-29 of September 24, 2019, Board Meeting Packet)

Business Impact

This regulation will not have a significant adverse economic impact on businesses because there is an existing classification for tree work (C-61/D-49 – Tree Service), and these licensees (3,413 licenses as of May 1, 2020) will be converted to the new classification automatically and at no charge or detriment to them. Such contractors will retain their existing license numbers and pay the same license renewal fee as they would have paid under their C-61/D-49 – Tree Service license. New applicants for the new C-49 – Tree and Palm classification will pay the same application and licensure fees that they would have paid for the C-61/D-49 – Tree Service license, so there is no adverse economic impact on these applicants. The proposed regulations will change the classification of license a contractor must hold to perform tree work, as well as

contribute to enhanced safety and professionalism in the trade that is encouraged by the minimum standard associated with the passing of a trade examination.

BPC sections 7029.5, 7029.6, and 7159 require licensees to include their name and license number on vehicles and in home improvement contracts, but there is no requirement that they include their license classification. Therefore, this proposal would not result in additional costs to affected licensees to update their vehicles or contracts.

Economic Impact Assessment

This regulatory proposal will have the following effects:

- It will not create or eliminate jobs within the State of California because licensed contractors have been able to perform tree work under the C-61/D-49 – Tree Service license and will be able to continue to do so under the new C-49 – Tree and Palm license. This proposed regulation will simply change the classification of license a contractor must hold to perform such work.
- It will not create new business or eliminate existing businesses within the State of California because licensed contractors have been able to perform tree work under the C-61/D-49 – Tree Service license and will continue to do so under the new C-49 – Tree and Palm license. This proposed regulation will simply change the classification of license a contractor must hold to perform such work.
- It will not affect the expansion of businesses currently doing business within the State of California because licensed contractors have been able to perform tree work under the C-61/D-49 – Tree Service license and will continue to do so under the new C-49 – Tree and Palm license. This proposed regulation will simply change the classification of license a contractor must hold to perform such work.
- It will benefit the health and welfare of California residents who hire contractors for tree work and of the California population at large by helping ensure that individuals who are licensed as C-49 – Tree and Palm contractors have the necessary knowledge, skills, and abilities in the trade and related health and safety principles of the profession, as tested in the trade examination, and are able to perform tree work in a safe, responsible, and effective manner, which benefits the health and welfare of California residents.
- It will benefit worker safety because the requirement of a trade examination intended by the Legislature to test applicants on their knowledge of the trade and related health and safety principles of the profession helps ensure that only those contractors who are qualified to do so are licensed and authorized to perform tree work, which is a significant health and safety issue for workers.
- It will benefit the state's environment because the requirement of a trade examination intended by the Legislature to test applicants on their knowledge of the trade and related health and safety principles of the profession helps ensure that only those contractors who are qualified to do so are licensed and authorized to perform tree work, which is a significant environmental issue.

Specific Technologies or Equipment

This proposed regulatory action does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

CSLB considered the possibility of creating an arborist health and safety certification program in lieu of the new C-49 – Tree and Palm classification. This alternative was rejected because DOSH performed research and determined that a new certification program is not needed because DOSH training and equipment requirements already exist for which DOSH will take responsibility for investigation and enforcement. DOSH will take action against violators and refer the final orders to CSLB.

CSLB considered the possibility of remaining with the status quo, in which a licensed contractor who holds the existing C-61/D-49 – Tree Service classification is the primary classification for tree work. This alternative was rejected because C-61/D-49 – Tree Service contractors do not need to pass a trade examination for licensure and, therefore, are less responsive to health and safety concerns relating to the dangers of tree work than the proposed C-49 – Tree and Palm classification, which will require a trade examination for licensure.

Only the proposed regulatory action will allow the continued licensure of contractors for tree work in a manner that protects the health, safety, and welfare of workers, consumers, and the public.