

TITLE 16. CONTRACTORS STATE LICENSE BOARD
NOTICE OF PROPOSED REGULATORY ACTION CONCERNING

§ 832, Specialty Contractors Classified
§832.49, Class C-49 – Tree and Palm Contractor

California Code of Regulations

NOTICE IS HEREBY GIVEN that the Contractors State License Board (CSLB or Board) is proposing to amend California Code of Regulations (CCR), title 16, Division 8, Article 3, section 832 and to adopt CCR section 832.49, as described in the Informative Digest.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action. The Board will, however, hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Written comments, including those sent by mail, email, or fax to the addresses listed under Contact Person in this Notice, must be received by CSLB at its office not later than **5:00 p.m. on Tuesday, June 8, 2021**. The Board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modification is sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Business and Professions Code (BPC) sections 7008 and 7059, and to implement, interpret, or make specific BPC sections 7026.1, 7058, and 7059, CSLB is considering changes to Division 8 of title 16 of the CCR, as described below.

INFORMATIVE DIGEST

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.

This proposal seeks to address the health and safety issues relating to 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 amend CCR section 832 to add the new C-49 – Tree and Palm classification to the list of specialty contractor classifications. CSLB proposes the following:

Amend Section 832 – Specialty Contractors Classified.

The existing language of CCR section 832 lists all existing specialty contractor classifications in alphabetical order.

This proposal will add the C-49 – Tree and Palm contractor classification in CCR section 832.49 to the listing between the Tile (C-54) and Warm-Air Heating, Ventilating and Air Conditioning (C-20) classifications.

Adopt Section 832.49 – Tree and Palm Contractor Classification.

There is no existing regulation relating to a C-49 – Tree and Palm contractor classification.

This proposal will adopt the regulation, as follows:

Addition of New Section Number and Title

- Add a new section and title to introduce the new C-49 – Tree and Palm contractor classification.

Addition of subdivision (a)

- 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.

Addition of subdivision (b)

- 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.

Addition of subdivision (c)

- 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 nursery person or gardener pursuant to BPC section 7026.1.

POLICY STATEMENT OVERVIEW/ANTICIPATED BENEFITS OF PROPOSAL

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.

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.

CONSISTENCY AND COMPATIBILITY WITH EXISTING STATE REGULATIONS

During the process of developing these regulations and amendments, CSLB has conducted a search of any similar regulations on this topic and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING PROPOSED ACTION:

Fiscal Impact on Public Agencies

The proposed regulatory action will result in costs or savings to CSLB. These are described below:

- *Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies:* CSLB estimates that the cost of developing the new C-49 – Tree and Palm contractor classification trade examination and implementing the new classification will include the following anticipated costs in the forthcoming budget years (BY):
 - Total Costs in BY 2021/22 are: **\$89,000**
 - Total Costs in BY 2022/23 are: **\$20,000**
 - Total Costs in BY 2023/24 are: **\$8,000**

Existing CSLB staff can absorb the workload associated with the creation of the new classification. No additional permanent staff will need to be hired to perform the exam development work. However, there will be other costs associated with other aspects of examination development, including subject matter experts and printing, as reflected above and discussed below.

The BY 2021/22 costs cover the occupational analysis, exam bank development, and test booklets.

The BY 2022/23 costs will be for examination administration only and will be absorbable within existing CSLB staffing and other resources, including test

centers. The Board has been administering and will continue to administer all other trade examinations at the existing test center locations, and it will not need to add any new test center locations or exam proctors or to extend test center hours of operation to administer the new C-49 – Tree and Palm classification trade examination.

CSLB is in the process of transitioning from administering its own examinations at its own test centers to using an outside vendor (PSI Exams) for exam administration through a Department of Consumer Affairs' master contract, but the relative cost impacts will exist whether the exams are administered by CSLB or PSI. The transition is anticipated to begin for examinations in the Bay Area by fall 2021, and a full transition to PSI only exams should occur sometime in 2022. These timelines are still subject to change as the transition is implemented. Regardless of whether CSLB or PSI will be administering the exams, the addition of the new C-49 – Tree and Palm classification trade examination will not result in the need to add any test center locations, personnel, or hours of operation; the administration will be absorbed within the existing resources.

The BY 2023/24 costs cover one follow-up exam development workshop after the C-49 – Tree and Palm trade examination has been in use for approximately one year.

The licensing workload and costs to issue the C-61/D-49 – Tree Service contractor license will be shifted to processing C-49 – Tree and Palm contractor license applications. As a result, no additional workload and costs are anticipated.

In addition, because the fee amounts for both license types are the same, no additional revenues are anticipated.

- *Nondiscretionary Costs/Savings to Local Agencies:* None
- *Cost or Savings in Federal Funding to the State:* None

Local Mandate

The proposed regulatory action does not impose a mandate on local agencies or school districts.

Cost to Any Local Agency or School District for Which Government Code Sections 17500 - 17630 Require Reimbursement: None

Business Impact

CSLB has made an initial determination that the proposed regulatory action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. This initial determination is based on the following facts:

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.

Cost Impact on Affected Private Persons or Businesses

The Board estimates that there will be no significant increased costs for businesses or individuals to comply with the proposed regulations.

This regulation will not have a significant adverse economic impact on affected private persons or businesses. This initial determination is based on the fact that there is an existing classification (C-61/D-49 – Tree Service) for tree work, 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 have to take and pass the new C-49 trade examination in addition to the existing law and business examination that they would have needed to pass for the C-61/D-49 – Tree Service classification. Such applicants 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. Some applicants who do not have sufficient knowledge or experience in the trade may have difficulty passing the trade examination, which may limit the number of applicants who obtain the C-49 – Tree and Palm license in the future if they remain unable to pass the trade examination. Until the C-49 – Tree and Palm classification trade examination is developed and administered, it is not possible for CSLB to know if the percentage of new applicants who are unable to pass the new C-49 trade examination is larger or smaller than the percentage of existing applicants who

would have been unable to pass the existing law and business examination that they would have been required to take for the C-61/D-49 – Tree Service license.

Housing Costs

The proposed regulatory action will not have an effect on housing costs.

Effect on Small Business

CSLB has determined that the proposed regulatory action may affect small businesses. Almost 66% of all contractors currently licensed by CSLB are sole ownerships (more than 228,000 out of nearly 348,000 licenses as of May 1, 2020). Therefore, applying that 66% rate to the 3,413 licensed C-61/D-49 – Tree Service contractors would mean that approximately 2,253 small businesses would be impacted by this regulatory proposal to reclassify their licenses to the C-49 – Tree and Palm contractor classification.

However, 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.

Results of the Economic Impact Assessment/Analysis

Creation of Jobs/Businesses

CSLB has determined that this regulatory proposal will not result in the creation of new jobs or 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 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.

Elimination of Jobs or Businesses and Effect on the Expansion of Businesses

This proposal will not have a significant impact on the elimination of jobs or existing businesses or the expansion of businesses in 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

Benefits of Regulation

CSLB has determined that this regulatory proposal will have the following benefits to the health and welfare of California residents, worker safety, and the state's environment:

- 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 and who possess the requisite knowledge and skills to perform the work in a manner that is effective for healthy trees and forests are licensed and authorized to perform tree work, which is a benefit to the environment.

AVAILABILITY OF TEXT AND INITIAL STATEMENT OF REASONS

CSLB has prepared an Initial Statement of Reasons for the proposed action, and all the information upon which the proposal is based is available upon request.

Copies of the exact language of the proposed regulations and any document incorporated by reference therein, the Initial Statement of Reasons, and the information upon which the proposal is based may be obtained upon request from the contact person named below.

CONSIDERATION OF ALTERNATIVES

CSLB must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would be either more effective in carrying out the purpose for which the action is proposed, would be as effective as and less burdensome to affected private persons than the proposal described in this Notice, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Interested persons are invited to present written statements or arguments relevant to the above determinations during the written comment period in accordance with this Notice.

AVAILABILITY OF FINAL STATEMENT OF REASONS AND RULEMAKING FILE

This Notice, the proposed text of the regulations, the Initial Statement of Reasons, and all the information upon which the proposed regulatory action is based is contained in the rulemaking file, which is available for public inspection by contacting the person named below. Interested parties may obtain a copy of the Final Statement of Reasons, once it has been prepared, by making a written request to the contact person named below.

WEBSITE ACCESS

Materials regarding the proposed regulatory action can be found at a link under the “What’s New” heading on CSLB’s home page at www.cslb.ca.gov.

CONTACT PERSON

Inquiries or comments concerning the proposed rulemaking action may be addressed to:

Contractors State License Board
9821 Business Park Drive
Sacramento, CA 95827
Attn: Betsy Figueira
(916) 255-3369
(916) 364-0130 (FAX)
Betsy.Figueira@cslb.ca.gov

The backup contact person is:

Michael Jamnetski
(916) 255-2798
Michael.Jamnetski@cslb.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Betsy Figueira at (916) 255-3369.